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AND COOPERATION IN EUROPE**

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**FROM VIENNA TO HELSINKI:  
REPORTS ON THE INTER-SESSIONAL MEETINGS  
OF THE CSCE PROCESS**

Prepared by the Staff of  
the Commission on Security and Cooperation in Europe  
Washington, DC

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**Letter of Transmittal**

The Vienna Follow-up Meeting, which concluded in January 1989, marked a watershed in the CSCE process. It was, as one expert put it, a "prelude to revolution." There, the death knoll for the communist systems which had dominated more than half a continent for the better part of this century were first heard. The extraordinary commitments hammered out at that meeting reflected the dramatic changes which were just beginning to unfold. Today, the CSCE begins a new follow-up meeting, in Helsinki, which must confront a vastly different set of challenges.

In between these two review meetings, an unprecedented number of fixed-term, inter-sessional meetings were scheduled. In roughly 3 years, 11 such meetings were convened. At each of these, Helsinki Commission staff participated fully as members of the U.S. delegations; their reports are compiled in this volume. Together, they not only provide a useful record of these negotiations, but also give keen insight into much of what lies ahead as the participating States seek to shape the CSCE process to respond to the new Europe.

It should also be noted that, in addition to the fixed-term inter-sessional meetings described in the compendium, the CSCE also held open-ended negotiations on Confidence- and Security-Building Measures in Vienna as well as a series of ad hoc high-level political consultations in different cities. Staff reports on those discussions are being compiled separately.

  
DENNIS DeCONCINI  
Co-Chairman

  
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## THE LONDON INFORMATION FORUM

### Summary

The London Information Forum, held from April 18 to May 12, 1989, was the first non-military follow-up activity to be held within the CSCE process following the conclusion of the Vienna CSCE Follow-up Meeting. The forum's goals, as mandated by the Vienna document, included examination of the circulation of, access to, and exchange of information; cooperation in the field of information; and the improvement of working conditions for journalists. Within this framework, participants were to examine the fields of oral, printed, filmed and broadcast information, and the possibilities for facilitating the freer and wider dissemination of information of all kinds.

In London, delegations considered fundamental human rights questions: the right to free expression and free choice of information sources. At issue were not only new initiatives in the exchange of information and technical issues, but also improved compliance with existing CSCE commitments in the field. In the end, the Forum provided an unprecedented degree of openness and access to the public and contributed to a candid and constructive exchange of views among the participants.

Although allegations of U.S. non-compliance were neither numerous nor substantial, the United States did come under forceful attack regarding its visa practices. In addition, Soviet journalists complained about restrictions imposed on their freedom of movement in the United States--restrictions imposed both out of reciprocity and national security.

While Hungary and Poland, to varying degrees, distanced themselves from their Warsaw Pact allies, Romania engulfed itself in self-imposed isolation. There was almost unanimity among Western and neutral delegations in applauding the changes in Hungary and Poland while noting the more limited nevertheless dramatic (though not institutionalized) changes in the Soviet Union.

#### **Organization of the Meeting**

Following open plenary sessions, the Forum divided into three Subsidiary Working Bodies--A, B, and C. Subsidiary Working Body (SWB)-A focused on printed information and the overall improvement in working conditions for journalists. SWB-B addressed this as well as film, broadcast, and oral information. The third working group covered communications in general, including the impact of new communication technology and questions of copyright. For the first time in the CSCE process, all plenary sessions were open to the public; in addition, all 21 informal sessions of the three working bodies were open to the accredited press and the public. The unprecedented degree of openness was an important advance in the CSCE process. Throughout these discussions the private sector representatives played a significant--indeed, a leading--role.

#### **U.S. Delegation to the Forum**

Ambassador Leonard H. Marks headed the U.S. delegation to the Forum and Mr. Rudolf Perina of the Department of State served as his deputy. The delegation was composed of representatives from the U.S. Commission on Security and Cooperation in Europe, the United States Information Agency, and the Department of State. Private sector representatives from the U.S. print and broadcast media, the film and book publishing industries, academia, and other interested organizations participated fully as members of the U.S. delegation. Nevertheless, the United States was criticized by some other delegations for failing to include prominent working journalists on its delegation.

#### **Opening of the Forum**

Prime Minister Margaret Thatcher opened the Forum on April 18 in a strong address, defending Britain's own record on freedom of information issues. Rather than skirt the controversy surrounding measures restricting press freedom in the United Kingdom, Prime Minister Thatcher spoke directly to the issue, asserting that the media must be responsible and fair, that no right is absolute, and that the rule of law must prevail.

The Prime Minister balanced her views on the media by underscoring the indispensability of the free flow of information and ideas to Western civilization and prosperity. She praised recent changes in Poland, Hungary, and the Soviet Union, while noting a lack of change elsewhere in the East. This lack of change, asserted Prime Minister Thatcher, was a proper subject for discussion. While disclaiming any desire to use the Forum to criticize other governments, she asserted that the primary task of the Forum should be a constructive implementation review of CSCE obligations. The Prime Minister challenged the participants to set higher goals and seek consensus on "additional measures" to "serve as a beacon for the new spirit of *glasnost* and openness."

#### The General Debate

##### SWB-A

The United States spoke at all 8 sessions of SWB-A, 7 of which consisted of interventions by the private sector. Dana Bullen, director of the World Press Freedom Committee, Charles A. Perlik Jr., former president of the Newspaper Guild (AFL-CIO), and Gerald Warren, editor of the San Diego Union, spoke against proposals for a uniform code of conduct for journalists advanced by Eastern delegations, calling instead for freer and wider dissemination of information.

Nicholas Veliotes, president of the Association of American Publishers, described the difficulties faced by book publishers in selling their products in the Soviet Union and Eastern Europe. A proposal was introduced by Veliotes to allow individual firms to use inconvertible currency to defray in-country business expenses. Leonard Sussman, a communications specialist with Freedom House, addressed the individual's right to access to technology (typewriters, word processors, copying machines and related instruments) and legalization of independent publishing. Mr. Sussman urged the Soviets to allow Sergei Grigoryants, the editor of GLASNOST, to attend a journalism conference in the United States in June 1989 in order to receive the Annual Freedom Award of the International Federation of Publishers.

Other issues raised included the need for greater access by believers to religious literature and information and by members of national minorities to materials in their mother tongue; the continuing persecution of individuals who advocate the free flow of information; and interference with the mails.

In a move that the Soviet delegation clearly viewed as premature for itself, the Hungarian and Polish delegations brought independent writers and opposition activists to the Forum as part of their official delegations. Both delegations distanced themselves to varying degrees from their Warsaw Pact allies. Poland, for example, stressed steps it had taken to limit the state's authority commensurate with a "pluralistic and differentiated order." Hungary echoed Western themes in its assertion that security in Europe depended not only on progress towards reductions in military forces, but on improvements in human rights as well. In this context, the Hungarian delegation cited legislation to be adopted later in the year which would allow anyone in Hungary to found a newspaper, local radio studio, or printing house. These opening plenary themes were taken much further by the independent voices of the Polish and Hungarian delegations during much of SWB-A.

One Hungarian delegate, Gaspar Miklos Tamas--who only 1 year earlier had been detained and beaten by police for his political activities--sounded the death knell of communist ideology in Hungary. While he characterized the media in his own country as relatively free, he painted a bleak and desperate portrait of life in Romania. Later, during a second intervention in SWB-A, Tamas described how police broke up a gathering of *samizdat* writers in Moscow on April 5 and the beating and detention of an EXPRESS-KHRONIKA correspondent by Soviets authorities. A publisher of the first underground Solidarity paper voiced the aspiration of his countrymen and women to be part of Western Europe. He urged an end to half-measures, arguing that the people of Poland want no censor at all.

If there was consensus in SWB-A it was that Romania had become the stereotypical "enemy." Its harsh human rights practices were roundly criticized by Western and Neutral and Non-



aligned states, as well as by Hungary. In the first informal meeting of SWB-A, a Swedish journalist proposed sending a joint declaration to the government of Romania to protest its boycott of the sessions. Although it was deemed premature, since two other delegations were absent as well, the proposal reflected a growing collective consternation and frustration with the markedly deteriorating situation in Romania, a country seemingly immune to international pressure. Romania's lone delegate took a low-key approach initially, refusing to acknowledge the escalating criticism directed at this country. When he finally did respond, he restated Romania's well-known position on sovereignty--the largely abandoned traditional Eastern tactic of declaring human rights criticism as interference in internal affairs.

Considerable concern was expressed by the delegations of United States, the United Kingdom, the Federal Republic of Germany, Spain, Austria, and Hungary regarding restrictions on free speech in Czechoslovakia. Vaclav Havel's name was repeatedly invoked as a symbol of the victims of repressive measures used by the state against human rights activists. From the beginning of the meeting, the Czechoslovak delegation sought to mitigate this mounting criticism by citing specific, concrete examples of its government's purported commitment to change and by putting forward numerous vaguely worded cooperation-oriented proposals, none of which garnered support.

Charges and countercharges between Turkey and Bulgaria began with Turkey's opening plenary speech of April 19, which criticized Bulgarian jamming of Turkish broadcasts, and carried on throughout the sessions of SWB-A. Questions regarding the plight of Bulgaria's sizable Turkish minority were met by the Bulgarian delegation with stinging accusations of censorship and systematic human rights violations in Turkey. Bulgaria was not alone; the Swedish delegation also made an impassioned plea on behalf of imprisoned Turkish writers. Questions of Turkish non-compliance with its CSCE commitments were also raised by other Western and Neutral and Non-aligned delegations.

Britain also came under close scrutiny--not only from Norway, Belgium, and, to a certain degree, the Soviet Union, but even

from public members in its own delegation. The United States was repeatedly and pointedly criticized regarding its visa laws, specifically the McCarran-Walter Act. For example, the beleaguered Czechoslovak delegation pointed to questions on the American visa form which seemed to lump Communist Party members with criminals and lunatics.

**SWB-B**

In opening remarks, Rudolph Perina, Deputy Head of the U.S. Delegation, raised questions about apparent failures of some CSCE states to respect their commitments under the Helsinki Final Act and CSCE documents. In particular the United States noted the continued Bulgarian jamming of Turkish radio and television broadcasts; the Romanian Government's suspension of broadcasts in the languages of its minorities; the Czechoslovak authorities' prevention of some of its citizens from attending a meeting of the International Helsinki Federation in Warsaw; and interference by Soviet authorities with television broadcasting in Soviet-occupied Lithuania and Latvia.

The United States also addressed problems encountered by U.S. journalists reporting on events in the Soviet Union and Eastern Europe, including difficulty in gaining access to sources, intimidation and even imprisonment of private citizens who speak to Western journalists, physical harassment of journalists, and technical problems with equipment and telephone communication.

Mr. E. Eugene Pell, the President of Radio Free Europe/-Radio Liberty, highlighted the continued importance of RFE/RL in providing uncensored news and information to appreciative audiences in Eastern Europe and the Soviet Union. William T. Reed, Senior Vice President of the Public Broadcasting Service, outlined the role of public broadcasting in the U.S. broadcasting system. He also discussed a joint program involving United States and U.S.S.R. high school students in a telebridge exchange last year, noting PBS's interest in further cooperation programs with the Soviet Union and other CSCE countries.

### ***SWB-C***

Unlike working groups A and B, SWB-C met only 5 times, engaging in technical discussions on communication flow. The U.S. delegation addressed the bureaucratic and regulatory impediments in the use of equipment for transmitting and receiving broadcasts and satellite circuits.

In one presentation, Leonard Sussman focused on the information revolution and the scope of its impending impact. Sussman argued that the Integrated Services Digital Network will be a "democratizing force motored by technology, but not restricted by the application of technology." "Technology," Mr. Sussman continued, "should drive politics, and human rights should be advanced by that drive." Toward this end, Sussman introduced an 8-point proposal aimed at, among other things, removing restrictions in the use of broadcasting equipment by journalists and encouraging development of globally accepted standards for telecommunications and computer connectivity.

### **Negotiations**

Austria played a dominant role in putting together a package of proposals tabled by the Federal Republic of Germany, Hungary, Poland, Austria, Switzerland, Italy, and Liechtenstein. This was the first time in CSCE history that such a coalition had been formed by members of the three major negotiating blocs (the Warsaw Pact, NATO, and the Neutral and Non-aligned) in tabling proposals. It marked a turning point with CSCE reflecting a significant shift of political interests in Europe, particularly in central and eastern Europe.

In the end, no proposals achieved consensus during the course of the Forum. Indeed a communique, outlining that the Forum had taken place, frank discussions were held, and reaffirming the commitment to implement all of the principles and provisions of the CSCE process was rejected by Romania. Lord Rees Moagg, as Chairman of the closing plenary session, read a very brief statement indicating that all proposals introduced during the London Information Forum would be forwarded to the next main

CSCE follow-up meeting, scheduled to be convened in 1992, in Helsinki.

#### Closure of the Forum

In his closing remarks on May 10, Ambassador Leonard Marks urged the delegates to view the Forum's conclusion not as an end, but as a prelude to an era of greater understanding, reduced international tensions, and closer bonds among the societies of the participating States. The CSCE nations should embrace change as an opportunity, not view it as a threat.

In viewing the achievements made during the 4-week meeting, Ambassador Marks noted that the Forum itself, in opening its deliberations fully to the public, had set an example for the realization of the Vienna commitment to ensure the freest and widest dissemination of information. But much more needs to be done, he argued. While some of the nations of Eastern Europe appear to be lifting the veil of secrecy which has shrouded their societies for so long, others still resist change and the forces of democratization and pluralism. For his part, Ambassador Marks indicated that he would recommend to the Secretary of State that the United States re-examine its own visa policies and travel restrictions. He encouraged the other participants to follow suit and seek to remove wherever possible unnecessary impediments to the free flow of information. Indeed, this remains a key ingredient in the fulfillment of the CSCE commitment to promoting international peace, security, cooperation, respect for fundamental freedoms and human rights, and the facilitation of contacts and communications between people.

#### Conclusions

Coming so closely on the heels of the Vienna Meeting--a meeting which lasted over 2 years and resulted in the adoption of a far-reaching concluding document--the London Information Forum lacked the political momentum necessary to adopt additional new substantive commitments. In addition, though shorter than previous CSCE follow-up activities, the Forum became repetitive during the third and fourth weeks, suggesting that a 2-

week meeting could have addressed the Forum's important issues adequately.

Nevertheless, the London Information Forum was significant not only in terms of its subject matter but also with regard to the unprecedented degree of openness that was achieved. It was notable as a CSCE meeting at which private sector representatives of Western delegations took issue, at times strongly, with their own government's information policies and with those of other Western governments. The Forum was also notable in that certain Eastern delegates also cited human rights violations and concerns in their own region. For the first time, a visible crack in the Warsaw Pact was clearly in view. Dissidents joined some Communist-led delegations to criticize their own governments, clearly indicating there could be no turning back.

THE UNIVERSITY OF CHICAGO  
CHICAGO, ILLINOIS

TO THE HONORABLE SENATE  
OF THE UNIVERSITY OF CHICAGO  
IN RESPONSE TO A RESOLUTION  
PASSED AT ITS MEETING OF  
MAY 1, 1954  
BY  
J. EDGAR HOOVER  
DIRECTOR

AND  
J. EDGAR HOOVER  
DIRECTOR

## THE PARIS MEETING OF THE CONFERENCE ON THE HUMAN DIMENSION

### Summary

From May 30 to June 23, 1989, the thirty-five States participating in the Conference on Security and Cooperation in Europe (CSCE) met in Paris for a meeting of the Conference on the Human Dimension of the CSCE. Known by its French initials as "the CDH," the Conference on the Human Dimension includes, first, a "mechanism" intended to help resolve human dimension cases and situations and, second, three four-week CDH meetings to take place between the Vienna CSCE Follow-Up Meeting, which concluded in January 1989, and the next main follow-up meeting, set for Helsinki in March 1992. Paris was the first of these three CDH meetings. The next will occur in Copenhagen in June 1990, and the third will take place in Moscow in September 1991. The meetings of the CDH cover the entire range of human rights and humanitarian issues, including human contacts.

The U.S. objectives for the Paris CDH Meeting were largely accomplished. In brief, the outcome of the meeting can be viewed in terms of these objectives:

***Level of Representation:*** Despite strong urging from the Helsinki Commission, Secretary of State Baker did not attend the opening of the Paris meeting, although a majority of participating States were represented by foreign ministers, including important NATO allies and the Soviet Union.

***Implementation Review:*** There was a very thorough implementation review. The United States and other delegations raised the full range of human rights and human contacts commitments in the Soviet Union and Eastern Europe. Illustrative cases and specific situations were cited. The U.S. delegation provided prompt and specific responses to criticisms of the U.S. human rights record. NATO allies likewise joined fully in this review.

***Use of the Human Dimension Mechanism:*** Prior to the meeting, the United States and other Western countries began to use the

human dimension mechanism contained in the Vienna Concluding Document. In brief, this mechanism commits each CSCE State to respond to requests for information and to representations made by other CSCE States on individual cases or broader human dimension issues. The mechanism is designed to establish a broad and continuing dialogue on human rights between East and West and to resolve specific cases and situations. Discussion of the mechanism in Paris was useful and included suggestions for its improvement.

**Proposals:** The United States put forth a proposal, introduced by Helsinki Commission Co-Chairman Steny Hoyer, calling for free elections and political pluralism in all CSCE States, including the Soviet Union and the countries of Eastern Europe. The United States also worked with other delegations on a proposal calling for the abolition of exit visas. These and a few other proposals, while not adopted in Paris, have set the stage for advancing CSCE commitments in the future.

**Document:** Prior to the meeting, there was a general perception that to add to the detailed and ambitious commitments of the recently adopted Vienna Concluding Document would produce only marginal, if any, benefits. There was, therefore, no attempt to seek the consensus necessary to adopt a substantive document in Paris, although there was a small, unsuccessful attempt at a non-substantive communique. The United States and others maintained that a strong reference was needed in this communique to deficiencies in implementation, but some Eastern countries, Romania and Bulgaria in particular, could not accept such a reference.

**Public Members:** Four private individuals, respected for their involvement in the promotion of human rights, were appointed as Public Members on the U.S. Delegation. All four were active and added considerable expertise and insight to the delegation's efforts, and demonstrated U.S. public interest in CSCE.

**NGO Activities:** Many non-governmental organizations (NGOs) attended the Paris meeting, including several from the United States. Unfortunately, the French hosts did not always provide



adequate access for NGOs and other members of the public. The police, there for security purposes, were at times overly restrictive in dealing with NGO representatives and other non-delegates, probably more the result of confusing public access arrangements than deliberate French policy. The U.S. Delegation raised these problems with the meeting's Secretariat, and directed considerable effort to assisting NGOs in gaining access to the conference center to observe the meeting and to meet with other delegates. Such access is important to the CSCE process, and the United States will need to monitor and encourage improved access in the future.

NGOs also engaged in numerous other activities, such as press conferences and seminars. The U.S. delegation, in addition to briefing NGOs and listening to their concerns, sponsored or participated in many of their events. These activities added considerably to the meeting, in particular by providing delegations with useful information on human rights abuses in CSCE States.

**Public Diplomacy:** The United States made a strong effort to publicize the Paris meeting. While there was relatively little coverage by the general U.S. media, the meeting was covered extensively in some of the NGO press. The Paris meeting received extensive coverage by Radio Free Europe/Radio Liberty, the Voice of America and the European press.

**Congressional Involvement:** From the beginning, the Helsinki Commission played an important role in the Paris CDH Meeting. Chairman DeConcini and Co-Chairman Hoyer each led successful congressional delegations to Paris, and, on the working level, Commission staff serving as members of the U.S. delegation participated fully in the delegation's work.

Ultimately, however, the success of the Paris CDH Meeting will be determined by the degree to which it will actually lead to improvements in compliance with CSCE provisions in the human dimension. Some positive events have taken place just prior to, during and since the Paris meeting, but other events, such as worsening human rights picture in Romania and the brutal treatment and the eventual mass expulsion of members of the ethnic Turkish minority in Bulgaria, demonstrated how much more needs

to be done to realize full implementation of CSCE commitments. Hopefully, the fact that specific violations of fundamental human rights were raised, criticized and condemned at the Paris CDH Meeting will, along with other efforts, lead to better implementation in the future.

#### Organization of the Meeting

The CDH concept originated in the negotiations of the Vienna CSCE Follow-Up Meeting, which lasted from November 1986 to January 1989. During these negotiations, Western countries, especially Denmark, France, the Netherlands, Canada, the United Kingdom and the United States, sought to elevate the status of human rights and other humanitarian issues within the CSCE for two interrelated reasons. First, Soviet and East European human rights performance, despite some improvements, continued to be well below CSCE standards. Second, the prospects for new negotiations on both conventional armed forces in Europe and on Confidence- and Security-Building Measures promised to enhance the military-security aspect of the CSCE greatly, thus threatening to upset the long-standing balance between the humanitarian and the military-security aspects of the CSCE.

The NATO countries therefore adopted a proposal based on a draft of the European Community to combine the relevant parts of the Principles section of Basket I and Basket III into one conference on "the human dimension," which would meet once each year after the Vienna meeting and before the next main follow-up meeting in 1992.

As a group, the Eastern countries did not express much interest in such a conference. Early in the Vienna Meeting, however, the Soviet Union tabled its own proposal for a Conference on Humanitarian Cooperation, to be held in Moscow and to focus on Basket III issues alone. During the ensuing two years of intense negotiations, the Eastern countries accepted the broader CDH concept, while the Western countries agreed to hold the third meeting of the CDH in Moscow in 1991. The first meeting was set for Paris in 1989, and the second for Copenhagen in 1990.

All three CDH meetings are to have the same agenda, which, in brief, consists of the following:

- 1) Opening statements;
- 2) A review of implementation of CSCE commitments;
- 3) A discussion of the "human dimension mechanism," in both plenary sessions and in Subsidiary Working Body "A" (SWB-A);
- 4) The introduction and consideration of proposals, in plenary sessions and in Subsidiary Working Body "B" (SWB-B); and
- 5) Concluding statements.

The mandate for the CDH provided that concluding documents could be adopted for each of the three meetings if it was so decided by the meetings themselves. As with all other non-military CSCE meetings mandated by Vienna, the plenary sessions of the Paris CDH Meeting were made open to the public. The French government, as host to the meeting, was responsible for the openness of and access to the meeting on the part of private individuals, either alone, as representatives of non-governmental organizations, or as members of the press, in line with the commitment contained in Annex XI of the Vienna Concluding Document.

#### **U.S. Delegation to the Meeting**

The U.S. delegation to the Paris CDH Meeting was led by Ambassador Morris Abram, now the head of the U.S. Mission to the United Nations in Geneva, Switzerland. Rudolf Perina, of the Department of State, was deputy head of the delegation; John Evans, also of the State Department, briefly served as acting deputy.

Other State Department officials served on the delegation, including Paula Dobriansky, Deputy Assistant Secretary for

Human Rights and Humanitarian Affairs. Pat McMahon of the United States Information Agency served as press officer. In addition, the Helsinki Commission staff had a strong representation on the delegation, under the direction of Deputy Staff Director Jane Fisher.

As in the past, the United States also appointed four private U.S. citizens prominent in the field of human rights to serve as Public Members on the U.S. delegation. They were: Ludmilla Alexeeva, a former member of the Moscow Helsinki Monitoring Group and consultant for Helsinki Watch; John Elliott, a senior partner in the Philadelphia law firm of Baskin, Flaherty, Elliott and Mannino; Alice Henkin, Vice-Chairperson of Helsinki Watch and director of the Justice and Society Program at the Aspen Institute; and Frank Koszorus, an attorney at the Washington-based law firm of Laxalt, Washington, Perito and Dubuc, and a member of the International Human Rights Law Group. The presence of these individuals on the U.S. Delegation testified to the importance of the CSCE and of human rights both to the U.S. Government and the American people. They provided the delegation with valuable expertise and enhanced contacts with various American organizations and interest groups concerned with the Paris CDH Meeting.

Yuri Orlov, founder of the Moscow Helsinki Group who served endured nine years imprisonment and exile for his human rights activism in the Soviet Union and is now a U.S. permanent resident, was also made a member of the U.S. delegation. Orlov delivered a statement in the meeting, commenting on his recent trip to Moscow--his first visit since he left in 1986.

#### U.S. Objectives for the Meeting

The United States had two main objectives for the Paris CDH Meeting: first, a thorough, objective and frank review of Soviet and East European implementation of their human rights and humanitarian CSCE commitments, especially those in the recently adopted Vienna Concluding Document; and, second, a meaningful discussion of the functioning of the human dimension mechanism which, as described in the Vienna Concluding Document, provides

for continuous dialogue on cases and situations relating to the human dimension of the CSCE. In carrying out these goals, the United States sought also to enhance public awareness--in both Eastern and Western countries--of the CSCE and of human rights issues through public observance and media coverage of the meeting.

The United States held the view, shared by many others, that the Paris CDH Meeting did not need to end with a concluding document. Since Paris was taking place only five months after the adoption of the Vienna Concluding Document, which represented a major advance in the specificity, scope and ambition of CSCE commitments on human rights and other humanitarian issues, it was felt that any additional commitments at this stage would have marginal impact and would create the impression that CSCE was more about words than deeds. Continued non-compliance with these new commitments on the part of some Eastern countries--including some egregious violations during the Paris meeting--strengthened the argument that new words were not the first priority at this time. Furthermore, it was felt that there had been insufficient use of the human dimension mechanism within the short time between Vienna and Paris to justify more than discussion of the experience gained to date.

#### Opening Statements and Implementation Review

The opening days of the Paris CDH Meeting took place in the historic Grand Amphitheater of the Sorbonne. While there was no provision in the agenda for opening the meeting at a ministerial level, the foreign ministers of more than 20 of the 35 participating States attended the proceedings and spoke for their countries. The Helsinki Commission had urged that Secretary of States James Baker also attend in order to demonstrate the American commitment to human rights, but, for scheduling reasons, he was unable to do so.

During the opening, the delegates were addressed by French President Francois Mitterand. Noting that "things are moving in the right direction," he said that this is one more reason to deplore the fact "that some are straggling behind." He said that

the time had come "to call rhetoric to account" regarding CSCE commitments in the human dimension.

In their opening statements, the participating States noted the importance of the human dimension of the CSCE, stated their objectives for the meeting and began the review of implementation. For example, in a forceful statement on Soviet and East European compliance with CSCE provisions, U.S. Ambassador Abram said: "We have witnessed remarkable progress since the Vienna Meeting opened... But there are no grounds for complacency. We cannot afford the luxury of self-congratulation... While we see positive changes in some areas, we cannot honestly ignore disturbing signs." He then detailed on-going human rights abuses in the Soviet Union and several East European countries.

The statement of Soviet Foreign Minister Eduard Shevardnadze focused primarily on the positive developments in the USSR, especially the development of new laws. He called for the development of a "common European legal space," an idea that would resurface later in the meeting.

All of the opening statements received audience applause, with the sole exception of the speech of the Head of the Romanian Delegation, Constantin Ene. The resounding silence which followed his statement, as well as the criticism directed at Romania by delegation after delegation from the very beginning of the meeting, demonstrated the collective outrage of the CSCE participating States at Romania's deplorable human rights record plus its refusal to accept the commitments which it undertook in the Vienna Concluding Document.

Following the opening statements, the Paris meeting moved from the Sorbonne to the Kleber International Conference Center. The subsequent review of implementation which took place there was thorough and frank, continuing through the conclusion of the meeting. This review noted many positive developments occurring in some East European countries as well as in the Soviet Union, but continuing violations of human rights and human contacts commitments received most of the attention. While many instances of non-compliance with the newly adopted Vienna provisions

were raised, some particularly egregious ones were raised repeatedly. Several statements noted with regret the tragic crackdown on those demonstrating for democracy in China, which took place during the course of the meeting. Among the more active participants in the implementation review were the United States, Canada, the Netherlands and the United Kingdom.

The most often raised violation was undoubtedly the barbaric treatment of the ethnic-Turkish minority in Bulgaria, including the mass expulsions of members of that ethnic minority from the country during the course of the meeting. Several Western delegations condemned the actions of the Bulgarian government. Romania was similarly criticized for mistreatment of its Hungarian and German minorities, as well as the confinement and harassment of human rights activist Doina Cornea. Delegates protested the reported Romanian construction of a barbed wire fence along its border with Hungary, along with trenches and a restricted border zone. Czechoslovakia was criticized primarily for the imprisonment of Vaclav Havel, who was released just prior to the Paris Meeting, and of other activists, who remained in prison for their participation in a demonstration in January. The German Democratic Republic was criticized for maintaining the Berlin Wall as well as its practice of shooting at persons attempting to cross the border. There was also criticism of the GDR government's intentional alteration of a provision of the Vienna Concluding Document on minimum exchange requirements when it published and disseminated the document in the GDR. Recent positive developments in Poland and Hungary were welcomed, although the need for further efforts was noted. The June 16 reburial of Imre Nagy and other participants in the 1956 Revolution in Hungary was hailed as an event long overdue.

The Soviet record in complying with Vienna human dimension commitments also received considerable attention. One such assessment was made by Dr. Yuri Orlov, a founding member of the Moscow Helsinki Monitoring Group and U.S. delegation member. In June 1989, Orlov returned to the Soviet Union for the first time since his release from internal exile and expulsion from the country. On human contacts issues, a number of outstanding emigration cases were raised by the United States and

other delegations. There were also calls to eliminate the requirement of an exit visa to leave the Soviet Union. Increased attention was paid to obstacles which hinder family visits. Numerous Soviet human rights problems were raised, including the denial of self-determination to the three Baltic States, official refusal to recognize the Ukrainian Catholic and Ukrainian Orthodox Churches, limits on the right to freedom of assembly, association and expression, and recent amendments to the Soviet criminal code.

Eastern participation in the implementation debate reflected their growing differences over human rights issues. The Hungarian delegation, for example, was more vocal in its criticism of Romania for its treatment of the Hungarian minority. Romania, in turn, rejected Hungarian and other criticisms of its human rights performance with lengthy denials that major problems existed, and with requests that the countries criticizing Romania focus on their own performance, especially regarding economic and social rights.

The Czechoslovak and GDR delegations also sought to defend their human rights record from Western criticism. Although a member of the Czechoslovak Supreme Court spoke, these delegations both remained relatively quiet, mainly responding to the most direct criticisms of their human rights records. The Soviet delegation, in contrast, sought to take the initiative in commenting on its record. Soviet speakers focused on legal reform in the USSR as it relates to human rights issues. The Soviet delegation included many high-level government officials and other prominent individuals concerned with human rights and related issues. These officials and individuals delivered statements in the meeting or participated in press conferences on the specific human dimension issues. They included:

- Anatoly Adamishin, Deputy Foreign Minister;
- Vladimir Andreev, Special Assistant to the Soviet Procurator General;
- Fyodor Burlatsky, representative of the Supreme Soviet Humanitarian and Cultural Subcommittee;
- Alexei Glukhov, Head of the Cultural Relations Section, Ministry of Foreign Affairs;



- Karen Karagezian, Chief of Division, Ideological Department of the CPSU Central Committee;
- Vladimir Kuzmin, a legal expert on the Central Committee;
- Rudolf Kuznetzov, Director of OVIR;
- Metropolitan Pitirim, a National Deputy of the Congress of People's Deputies and Russian Orthodox Church representative;
- Yuri Reshetov, Director of the Department on Human Rights, Ministry of Foreign Affairs;
- Felix Stanyevsky, Soviet Representative to the U.N. Human Rights Commission;
- Valentina Tereshkova, former cosmonaut and President of the Presidium of the Union of Soviet Friendship Societies; and
- Venyamin Yakovlev, Minister of Justice-designate.

Early in the meeting, the Bulgarian government had similarly added numerous high-level officials and prominent individuals to its delegation, but they did not play an active role in the meeting. This was perhaps the result of the heavy criticism Bulgaria received for its treatment of the Turkish minority, which led the Bulgarian delegation to take a more defensive approach.

While the Eastern delegations spoke primarily in an attempt to defend their implementation records, they occasionally did criticize Western countries, usually as a way to respond to criticisms of their own records. This was particularly true in a Soviet delegation statement late in the meeting which charged Canada, Great Britain and the United States with a litany of violations. Among the charges against the United States were: the non-ratification of the International Human Rights Covenants; McCarran-Walter Act restrictions on entry into the United States; legal discrimination against women; the denial of an equal right to education for Blacks and Hispanics; mass outbreaks of anti-Semitism; and discrimination against Native Americans. U.S. Ambassador Abram rebutted these charges, as did the Canadian and British representatives, by describing the real-life situation in the United States in each area and contrasting this with the significantly worse situation in the Soviet Union.

Beyond the plenary debates, the U.S. delegation took advantage of the opportunity presented by the Paris meeting to hold bilateral discussions with delegations representing countries where the United States has specific human rights concerns. Such meetings took place with the Bulgarian, Czechoslovak, Soviet, Turkish and Yugoslav delegations.

#### **The Human Dimension Mechanism**

As a result of Western desire to improve the implementation of the CSCE provisions in the human dimension, covering both the Principles section of Basket I and all of Basket III, a device was created--known as the "human dimension mechanism"--at the Vienna meeting. The human dimension mechanism allows any participating State to raise instances of non-compliance with any other State at any time and commits the other State to respond.

Specifically, the Vienna Concluding Document commits each of the participating States:

- (1) to respond to requests for information and to representations from any other participating State on specific cases or broad situations relating to commitments in the human dimension of the CSCE;
- (2) to meet bilaterally with participating States requesting such a meeting to examine these cases or situations;
- (3) to bring, if it deems it necessary, these cases and situations to the attention of the other participating States; and
- (4) to provide, if it deems it necessary, information on what has transpired in paragraphs (1) and (2) at the three meetings of the CDH.

Since the Vienna Meeting, many countries have invoked the human dimension mechanism with other countries, at times using all of the first three paragraphs. The Paris CDH Meeting provided the forum for the fourth paragraph. In fact, a considerable

amount of time was spent in Paris evaluating the functioning of the mechanism and discussing how it should be used in the future. Although the 35 delegations did not agree on any particular suggestion, the discussion was useful in reaching a greater understanding of how others view this new human rights tool.

In SWB-A, mandated to evaluate the human dimension mechanism, almost all delegations praised it. In reviewing its use, Romania was heavily criticized for rejecting the very notion of the mechanism. Despite lengthy debate over the validity of the Romanian reservation regarding the mechanism in Vienna, the Romanian delegation maintained that its government considered the mechanism an infringement on its sovereignty and would continue to reject any attempt use it with Romania. All delegations speaking on this particular issue rejected Romanian claims.

Czechoslovakia and the GDR, in an apparent attempt to distance themselves from the Romanian position, noted that they had acted in compliance with the Vienna commitments on the mechanism. The Western countries acknowledged this but expressed disappointment that in neither case did it lead to a favorable solution of a particular human rights problem. Turkey and Bulgaria engaged in heated debate over the reciprocal use of the mechanism. Turkey argued that Bulgaria sought to evade the use of the mechanism by linking its responses to predictably unacceptable conditions. Bulgaria denied this charge and made counter-claims against Turkey. Bulgaria's practice was criticized by several delegations.

In light of the problems raised on past use of the mechanism, several delegations suggested ways to improve its future application. Canada, for instance, suggested that all uses of the mechanism--representations, requests and responses--should be made in writing in order to make it clear that the mechanism was in fact being used, and to have a reliable record of what transpired. A number of Eastern, neutral and Western delegations, including the United States, supported this suggestion.

Many delegations discussed the order in which the Vienna paragraphs describing the mechanism are applied. Some, including

the United States, argued that they should be used flexibly, in accordance mainly with the circumstances surrounding the case or situation, while others indicated a preference for using them in strict order. There were similar differences of views on setting time frames for responding to requests and representations made through the mechanism.

Views differed more sharply when several Eastern delegations suggested that future uses of the mechanism should take a broader approach, rather than the "narrow approach" of raising specific cases of individuals. It was never made clear whether a broader approach referred to the procedural aspects of the mechanism or its subject matter. The Czechoslovaks suggested that the mechanism should not be wasted on individual cases but on topics such as the comparative study of legal systems. They further suggested that the mechanism be used in the framework of parliamentary exchanges, maintaining that earlier meetings with Members of the U.S. Congress were, indeed, uses of the mechanism. They received no support on this particular item, as the language in the Vienna Concluding Document clearly states that the mechanism must be used through formal diplomatic channels. The United States and others argued that the mechanism should be used on both specific cases and broader implementation problems as the State concerned sees fit.

#### **Proposals**

After the third week of the Paris meeting, the participants began to introduce and consider proposals which, according to the agenda, "aimed at improving implementation of commitments and cooperation in the human dimension of the CSCE aimed at enhancing the effectiveness" of the human dimension mechanism. This was done in plenary and in SWB-B.

A total of 36 proposals were introduced, covering a wide range of topics. While many proposals could be considered strictly Eastern in that they had little if any support beyond some Eastern delegations, many Western and neutral proposals enjoyed wide support, including from some Eastern delegations. This

trend reflected a broadening base of support for Western human rights objectives within the CSCE.

One proposal, introduced by the United States, called for free elections and political pluralism, including the possibility of multiple political parties, in all CSCE participating States. Building upon a commitment in the Universal Declaration of Human Rights, this proposal would commit the participating States to allow "the will of the people to serve as the basis of authority of government" by establishing periodic, genuine and free elections; allowing individuals to establish and maintain their own political parties with their own political programs; respecting the right of individuals to seek office and to be elected; and permitting the observation of election proceedings. In announcing the proposal in a plenary statement, Helsinki Commission Co-Chairman Hoyer noted how events in Eastern Europe and the Soviet Union--where no political pluralism has existed in forty years or longer--are now moving in this direction. He challenged the governments of these countries to seek the consent of the governed through free elections.

The United States also considered introducing a proposal calling for the elimination of the requirement for exit visas. Other delegations, Austria and Hungary in particular, were similarly interested in such a proposal, and the United States decided to work with these delegations to produce a common proposal. The United States co-sponsored this Austro-Hungarian proposal, as well as a Canadian proposal to facilitate public access to future CDH meetings and a Swiss proposal committing the participating States to permit the foreign observation of trials.

Other important proposals introduced by Western and neutral countries, some of which were supported by the U.S. Delegation, included a strongly worded British proposal detailing legal measures to be taken in order to establish an independent and impartial judicial system based on the rule of law. Among other things, this proposal aims to commit all CSCE States to accept such key judicial principles as the presumption of innocence until proven guilty, and allowing all activities not expressly prohibited by law.

The judicial systems of Eastern countries have generally not operated on the basis of these principles.

The Canadian delegation introduced proposals on the important topics of human rights monitoring and freedom of movement. In addition, Portugal tabled a proposal on the abolition of the death penalty, and the Netherlands introduced one on conscientious objection to military service. Spain, on behalf of the 12 members of the European Community, tabled proposals on freedom of expression and of association and assembly. An Italian proposal was introduced to improve the functioning of the human dimension mechanism. Austria submitted a proposal on free trade unions. All of these proposals enjoyed widespread support.

Eastern delegations introduced proposals as well. Most of them, such as GDR proposals on "The Human Dimension and Scientific and Technological Progress," and "Political Culture and Cooperation in the Field of the Human Dimension of the CSCE" did not receive much attention. The Soviet and Bulgarian delegations introduced and discussed their proposals on inter-parliamentary contacts in the human dimension, but these proposals did not draw much comment either, except by a British delegate who noted that Western democracies would have difficulties in committing their independent parliaments to such cooperation.

One much-touted proposal, introduced jointly by France and the Soviet Union along with other delegations, was on "the creation of a common legal area based on a Europe of States in which the rule of law prevails." This proposal called for comparative analysis of all aspects of the legal systems of the participating States. This idea, originally suggested by Soviet Foreign Minister Shevardnadze in his opening statement to the Paris Meeting, was repeatedly raised by the Soviet and other Eastern delegations, and by some Western and neutral delegations as well. The United States, expressing views shared by many other Western countries, questioned the advisability of creating a common legal space in Europe when, in some countries, there is no democratically elected legislature to create laws reflecting the will of the people nor an independent and impartial judicial system to ensure the just application of the law.

#### **Concluding Document and Closure of the Meeting**

As stated earlier, the United States and numerous other delegations saw little need to close the Paris CDH Meeting by adopting a concluding document. Nevertheless, some countries--particularly the host country, France--felt that it was appropriate to seek a communique to the meeting. Such a non-substantive document would note that the meeting exchanged views on the implementation of the CSCE commitments in the human dimension and tabled proposals that would be forwarded to the next CDH meeting in Copenhagen for further consideration.

The United States, while skeptical of the utility of such a document, nevertheless agreed to participate in drafting a Western version to submit to the rest of the participants. An agreed version was drafted and submitted to other delegations in the closing days of the meeting. Even though it had been watered down to achieve general acceptance, Romania informally rejected the document, and Bulgaria and some other Eastern countries said that it would have to be amended, particularly the reference to the "serious deficiencies" in CSCE implementation. The United States, along with Turkey and Canada, argued that no document was a better result than one which papered over existing human rights violations, especially as more detailed reports on the expulsion of members of the Turkish minority from Bulgaria became known in Paris. As a result, there were no further efforts to seek consensus to any document.

In their concluding remarks, the participating States highlighted the achievements of the Paris meeting, and many stated that they looked forward to continuing the discussion, including the consideration of the 36 proposals tabled, at the Copenhagen CDH Meeting. The French representative, serving as the last Chairperson, first took note of this desire and then closed the Paris CDH Meeting.

#### **Congressional Participation**

Two congressional delegations, both from the Helsinki Commission, attended the Paris CDH Meeting. Senator Dennis DeConcini (D-AZ), Chairman of the Helsinki Commission,

attended the opening of the meeting. Chairman DeConcini also held bilateral talks with the Soviet and Yugoslav delegations and had conversations with other delegations, including the foreign ministers of Czechoslovakia and Yugoslavia. In addition, the Chairman held a press conference to outline Commission views of the Paris Meeting and of the human rights situation in the Soviet Union and Eastern Europe. Senator DeConcini also hosted a reception for the heads and deputy heads of all delegations, as well as representatives of non-governmental organizations and the media.

In the final week of the meeting, Representative Steny H. Hoyer (D-MD), Co-Chairman of the Helsinki Commission, chaired a congressional delegation to Paris which included Representatives Ben Cardin (D-MD) and Dennis Eckart (D-OH). They held bilateral talks with the Czechoslovak delegation as well as with the Turkish delegation. They also held a press conference outlining congressional interest in human rights and the CSCE process. In addition, Co-Chairman Hoyer delivered a plenary statement in the meeting, in which he introduced a U.S. proposal calling for free elections and political pluralism in all 35 CSCE participating States.

During the third week of the Paris Meeting, Representative Jack Buechner (D-MO) visited the U.S. delegation and held bilateral talks with the Soviet delegation. In these talks, he focused on the restructuring of the Supreme Soviet and stressed the importance, from the view of U.S. Congress, of placing emigration reform high on the priority list of legislative proposals to be considered.

#### NGO Attendance and Activities

Numerous non-governmental organizations (NGOs) were present at the Paris Meeting, demonstrating the continuing interest as well as the important role of private individuals in the CSCE process. In addition to those based in Canada and Europe, more than 25 representatives of U.S.-based NGOs were present, focusing on a variety of issues. Soviet Jewry, Ukrainian, Estonian, Lithuanian, Russian, Hungarian, and Bulgarian-Turkish NGOs



were active on issues relevant to these ethnic or religious groups, while other NGOs focused on specific topics such as family visits. Others, such as the International Helsinki Federation, covered the gamut of human rights concerns. The U.S. Delegation worked closely with these individuals and groups, assisting them in gaining access to the conference center, briefing them on U.S. views of the meeting, listening to their views and concerns, attending the events which they organized, and, in some cases, sponsoring these events. On the eve of the meeting, Commission Chairman DeConcini hosted a well-attended reception for visiting NGOs as well as for members of other delegations and the press.

Individuals from the Soviet Union and several East European countries sought to come to Paris to attend the meeting. The Soviet, Bulgarian, Czechoslovak and Romanian governments were criticized, both publicly and privately, by the United States and other Western delegations for refusing to permit the travel of over one dozen individuals, such as Konstantin Trenchev and Kristofor Subev from Bulgaria. Among those who did come to Paris, albeit after delay in some cases, were: Arvydas Jozaites, a leading member of the Lithuanian Popular Front, "Sajudis"; Lev Lukianenko, Chairman of the Ukrainian Helsinki Union; Sergei Grigoryants, editor of the journal *Glasnost*; Lev Timofeyev, editor of *Referendum*; Semyon Akselrod, Mikhail Chlenov, Alexander Lerner, Alexander Shmukler and Roman Spector, all Soviet Jewish activists; Oleg Rumyantsev, a Moscow human rights activist (who had all his papers confiscated by Soviet border officials en route to Paris); Petur Manolov, Bulgarian poet and human rights activist; Koprinka Chervenovka, Bulgarian theater critic; Blaga Dimitrova, Bulgarian poet and novelist; and Petko Simeonov, Bulgarian political scientist. Several individuals from Hungary concerned with the plight of the Hungarian minority in Romania, among them Attila Ara-Kovacs, Gyula Keszthelyi and Gustav Molnar, were able to come to Paris without any known difficulties.

All plenary sessions of the Paris Meeting, like other non-military CSCE meetings mandated by the Vienna Concluding Document, were open to the public, and NGO representatives as well as other private individuals were able to observe the proceedings. Space considerations limited seating in the plenary hall, but

the French Secretariat provided simultaneous television broadcast on large screens in a spacious adjoining room, as well as on television in the press center. This was a marked improvement over the situation in meetings held prior to the Vienna Meeting, where, with the exception of opening and concluding sessions, the East insisted that plenaries be closed to the public. The Secretariat did introduce new measures to ease public access to the conference center, but these arrangements were at times cumbersome and inconsistently applied. At times, unfortunately, this hindered NGO entry to the conference center.

Beyond observing the debate, NGO representatives were able to engage in several other activities. They met with the United States and other delegations to make their concerns known. Eastern delegations, especially that of the Soviet Union, showed a greater willingness to meet with Western NGOs to discuss human rights issues than they had shown in previous CSCE meetings. NGOs also held their own activities. For example, the International Helsinki Federation held a seminar on June 1 to discuss a wide range of human rights issues, and on June 2-3 the French-based organization, Foundation for the Future, sponsored a colloquium on human rights in which Ambassador Abram and several Eastern human rights activists participated. Ukrainian organizations held a demonstration for religious freedom in Ukraine, and the Hungarian Human Rights Foundation held a press conference on the Hungarian minority in Romania, sponsored by the U.S. delegation.

### Conclusions

In their concluding statements, most of the participating States in the CSCE labeled the Paris CDH Meeting a success. As Ambassador Abram said in his closing remarks, "I should like to note for the record my country's belief that this Paris meeting has met our objectives, and we are very pleased indeed." This is undoubtedly true. Some of the results of the meeting include:

- o The presence of over 20 foreign ministers at the Paris meeting attested to the importance of human rights in the CSCE process.

- There was a thorough and frank review of implementation since the Vienna meeting. A large number of Western and neutral delegations, including that of the United States, spoke candidly about violations of CSCE provisions included in the human dimension of CSCE, sometimes citing illustrative cases of particular individuals whose human rights had been violated. Even certain Eastern delegations raised important implementation issues, such as the Hungarian and Soviet criticism of Romanian performance. Unlike at some past CSCE meetings, no delegation attempted to block this implementation review. This was an encouraging development in light of signs at the London Information Forum that some countries, including from the West, seemed to believe that a thorough implementation review was no longer necessary in the aftermath of the Vienna meeting and the growth of glasnost\* in the East.
- The evaluation of the human dimension mechanism in Paris should lead to better utilization of this human rights tool in the future. Despite differing views on its application, there is now a better understanding of these differing approaches, and some areas of general agreement were found.
- There was no concluding document. The United States and others did not think one was necessary and, in fact, saw potential dangers in adopting one. The fact that little effort was wasted on trying to achieve one gave the delegates more time to engage in a thorough review of implementation of existing commitments. One ominous sign which emerged, however, was the realization that Romania intends to hold the CSCE process hostage in the area of human rights. Clearly, Bucharest will not give its consensus to progress in this area at any future meeting unless forced to do so.
- The U.S.-introduced proposal on free elections and political pluralism and other proposals, such as those on the abolition of exit visas and on the establishment of the true rule of law, have set the stage for future efforts in the human dimension of the CSCE. Leaving the Romanian problem aside, some of these new proposals represent possibilities for major advances in the future.

- The continual presence of American NGOs throughout the meetings, the active congressional participation, and the valuable assistance of the Public Members on the U.S. Delegation, including Yuri Orlov, all made clear the commitment of the United States to human rights and other humanitarian issues.
- The meeting also generated increased public interest in other countries. While some were not permitted to attend, the fact that a number of private citizens from Eastern countries were able to come to Paris to observe the proceedings and to raise their concerns with delegates represented an important advance.

Ultimately, however, the success of the Paris CDH Meeting will be determined by the degree to which it will actually lead to improvements in compliance with CSCE provisions in the human dimension. While it is difficult to assess this broader objective at this early stage, some positive events have already occurred, such as the release of Vaclav Havel from prison in Czechoslovakia just prior to the meeting, and the resolution of a number of outstanding family reunification cases by the Soviet Union. During the meeting, Soviet authorities released, pending trial, 11 imprisoned members of the Karabakh Committee. In addition, Soviet President Gorbachev directed the new Congress of Peoples' Deputies to reject a restrictive new law--Article 11(1) on "Insulting or Discrediting State Organs and Public Organizations"--and the new Congress did so.

Unfortunately, other events taking place during the course of the meeting, such as the negative developments in Romania and the brutal treatment of members of the ethnic Turkish minority in Bulgaria, showed how much remains to be done. Some ongoing violations in other East European countries and in the Soviet Union continued as well. Hopefully, the fact that these violations of fundamental human rights were raised and condemned at the Paris CDH Meeting will, along with other efforts, result in better implementation in the future.

## **THE SOFIA CSCE MEETING ON THE PROTECTION OF THE ENVIRONMENT**

### **Summary**

From October 16 to November 3, 1989, the thirty-five States participating in the Conference on Security and Cooperation in Europe (CSCE) convened in Sofia, Bulgaria, for a meeting on the protection of the environment. The three-week experts meeting was mandated by the concluding document of the Vienna CSCE Follow-Up Meeting "to elaborate recommendations on principles and guidelines for further measures and cooperation in new and important areas of environmental protection." According to the agenda, these three areas are: (1) the prevention, control and clean-up of industrial accidents with transboundary effects; (2) the management of hazardous chemicals; and (3) transboundary water pollution. The agenda also provided for discussion of public awareness issues, which includes the work of individuals and groups concerned with the environment.

While the Sofia environmental meeting provided a useful forum for discussion of environmental issues among the 35 CSCE States, its more important result was to serve as a catalyst for radical political change in Bulgaria. The major elements of this change were the ouster of long-time, hardline leader Todor Zhivkov and his replacement by party leadership which is at least publicly committed to deep, democratic reforms.

The contribution which the Sofia environmental meeting made to these political developments was to provide a protective cover for unprecedented public protest activity, both on environmental questions and on general human rights issues. This public activity started with meetings in a park of a relatively small group of private Bulgarian environmentalists called Ecoglasnost and eventually led to the mass demonstrations and behind-the-scenes political maneuvering which toppled the old regime.

The turning point came about mid-way in the meeting when the Bulgarian authorities unexpectedly reversed a policy of relative tolerance toward the activities of Ecoglasnost members and dis-

patched a group of plain clothes thugs to beat them up and scatter some of them throughout the country. This incident so enraged the overwhelming majority of the representatives at the meeting, including those from some communist countries, that they threatened the practical end of the meeting unless the Bulgarian authorities apologized for what had occurred and the bullying tactics ended immediately.

Faced with this angry determination of the other States and publicly bound by commitments made at the Vienna CSCE meeting to provide conditions of freedom at the Sofia meeting, the Bulgarians capitulated. After a tense night, the Bulgarian representatives returned to the meeting and essentially did what was demanded of them. Harassment of the private groups and citizens ceased, a veiled but clear apology was forthcoming and the meeting got back on track. At the end of the meeting, the largest-ever group of private citizens in Bulgaria up to that time delivered, unhindered, a petition citing ecological abuses to the parliament. The rest is history.

Although Romanian intransigence prevented the adoption of a final report, the Sofia meeting represented a useful contribution to the CSCE process in the area of the environment. It also provided a valuable and timely forum for raising human rights issues in a number of countries. It provided an opportunity to examine Bulgarian human rights performance firsthand, including the treatment of the ethnic Turkish minority. It encouraged an unprecedented amount of independent activity in the country and possibly even provided impetus to changes in the leadership. In addition, experts from the participating States were able to exchange views on environmental problems and to share information on how to respond to those problems. There was general agreement to pursue efforts initiated in Sofia at the United Nations Economic Commission for Europe (ECE) and the United Nations Environment Programme (UNEP), as well as to forward all proposals introduced to the next main CSCE follow-up meeting, which will take place in Helsinki in 1992. Included among these is a proposal introduced by the United States delegation on independent environmental activism, which contained strong human rights language and received substantial support from other delegations.

The remainder of this report will concentrate on what took place at the meeting itself rather than the dramatic events which were unfolding on the Bulgarian political scene as described above.

#### **The Development of Environmental Concerns in the Helsinki Process**

The CSCE process initiated by the Helsinki Final Act is known primarily for its focus on human rights and humanitarian issues, as well as military-security matters. These issues continue to dominate, but interest has recently grown in others, especially East-West cooperation in protecting the environment.

The Helsinki Final Act contains a number of provisions on a broad range of environmental issues, expressing the political will of the signatories to take action on their own and to work together in specialized international fora, such as the United Nations Economic Commission for Europe (ECE) and the U.N. Environment Program (UNEP), in order to elaborate environmental protection measures. This cooperation is of critical importance in that environmental problems in Europe often are transboundary in nature.

The Madrid Concluding Document, adopted at the second follow-up meeting in 1983, contained only one paragraph on the environment, which encouraged on-going work in the U.N. framework. The Chernobyl nuclear accident in April 1986, the spilling of deadly chemicals into the Rhine at Basel later that year, reports in 1988 of dying marine life in the North Sea, continued signs of dying forests in Europe and increasing evidence of environmental disasters in Eastern Europe and the Soviet Union, however, made environmental issues a major concern at the third follow-up meeting in Vienna. Even most Eastern countries, previously reluctant to take major steps in this area, seemed to realize that international cooperation to protect the environment had become an urgent matter.

As a result, the Vienna Concluding Document, adopted in January 1989, contains many new environmental protection commitments, including on Air and Water Pollution, Protection of the Ozone Layer, Nuclear Safety, Industrial Accidents, Hazardous Wastes and Chemicals, Protection of Flora and Fauna, and Environmental Education/ Public Awareness issues. It also mandated the holding of the Sofia meeting, the first CSCE meeting devoted exclusively to the protection of the environment.

#### **Negotiating History of the Sofia Meeting**

Early in the Vienna meeting, five Nordic countries (Denmark, Finland, Iceland, Norway and Sweden) introduced a proposal for a CSCE meeting to be held on a wide range of environmental protection issues. Similarly, the Bulgarian delegation, with the support of other Warsaw Pact delegations, proposed an Ecological Forum, to be held in Sofia. Most delegations were critical of both proposals because they were too broad, focusing on areas, such as air pollution, which were already being covered in the United Nations Environment Program (UNEP) and the U.N. Economic Commission for Europe (ECE) and other international fora. Rather than duplicate the work of these fora with a CSCE meeting, the United States and other Western delegations argued, the Vienna meeting should encourage intensified cooperation in these fora.

Later in the meeting, neutral and non-aligned (NNA) delegations, led by Switzerland, introduced a new initiative on follow-up in the environmental field. In form, it resembled most closely the original Nordic proposal, but rather than duplicating work done elsewhere it focused on three areas which were becoming increasingly important in Europe but where cooperation between East and West had not advanced very far. These three areas were industrial accidents, hazardous chemicals, and transboundary water pollution.

Primary focus was placed on the first area, industrial accidents. The 1986 Sandoz chemical spill in the Rhine River at Basel, Switzerland, demonstrated both the dangers posed by industrial accidents and the need for increased international cooperation in



this area. The intent of those proposing a CSCE meeting on environmental protection was to draw up guidelines for a convention on the prevention, early-warning and clean-up of industrial accidents, as well as to work out liability arrangements. The guidelines would then be developed into a convention by the ECE.

The specific, non-duplicative nature of the newly proposed agenda removed most substantive objections to a CSCE meeting on the environment. Nevertheless, several changes to the NNa proposal were made before it was accepted as part of the balanced array of meetings to follow Vienna. First, the United States, arguing that the role of the public in achieving the goals of the Helsinki Final Act was a cornerstone of the CSCE process, added public awareness of environmental problems as a topic on the agenda. Eastern countries, with somewhat less success, sought to have issues relating to environmental technologies added as well. They, and some Western countries, also moderated the mandate regarding guidelines for a convention on industrial accidents, maintaining that Vienna should not prejudge the conclusions reached at the environment meeting itself about the need for such guidelines or a convention. Finally, the meeting was shortened from four weeks to three in the interest of saving costs and ensuring that government environmental experts could attend the meeting for its full duration.

Although there were some reservations regarding the Bulgarian request to host the meeting, Sofia was eventually accepted as the site as part of the final compromise reached at the Vienna meeting. Throughout Vienna, Eastern delegations had complained about an imbalanced approach in selecting meeting sites. Western and NNa delegations, while arguing that the many restrictions and controls on activities in Eastern countries made them less appealing as sites for CSCE meetings, realized that agreement to a certain number of Eastern sites was necessary to achieve consensus. The removal of Prague as a potential site for an economic meeting, following the detention of many human rights activists in Czechoslovakia, and the strong desire of many delegations to have a meeting on environmental protection, combined to strengthen the Bulgarian position.

Concerns about the effect of Eastern restrictions on independent activities on the overall conduct and outcome of the meeting, however, prompted Western delegations to obtain, in return for accepting Sofia and other Eastern sites for CSCE meetings, a written commitment by host countries to abide by or build upon current practices regarding access to and the openness of CSCE meetings for representatives of the media and non-governmental organizations (NGOs), as well as other private individuals. This commitment, applicable to all post-Vienna meetings, was adopted as Annex XI of the Vienna Concluding Document.

In addition, concern about choosing Sofia as the site lingered as a result of continued Bulgarian human rights violations. Immediately after adopting the Vienna document, Turkey made an interpretive statement saying that it will not be able to ignore "strong opposition at home while taking its decision for sending a delegation to Sofia" if the Bulgarian authorities do not become more forthcoming in the treatment of the Turkish minority. Bulgaria, in turn, said that it will regard an action violating the rule of consensus as "a serious precedent" undermining future CSCE events and "indicating unwillingness to join ... efforts for the protection of the environment."

The continuation of the forced assimilation campaign against ethnic Turks, which led more than 300,000 to flee across the border to Turkey in the summer months of 1989, raised serious questions as to whether Turkey--and, indeed, the United States--would send a delegation to Sofia. The eventual U.S. position on this matter was that non-attendance would accomplish little except to deny the United States a forum to criticize Bulgarian human rights performance. Moreover, representing a violation of a Vienna commitment, non-attendance could serve to undermine the CSCE process and the principle of consensus on which it is based. Just prior to the meeting, Turkey likewise decided that it was better to attend than not.

#### **Organization of the Meeting**

The agenda and modalities for the Sofia meeting are contained in Annex VI of the Vienna Concluding Document. In brief, the meeting was organized as follows:

1. Opening plenary statements and contributing statements by the U.N. Environmental Program (UNEP), the U.N. Economic Commission for Europe (ECE) and the International Union for Conservation of Nature and Natural Resources (IUCN, also known as the World Conservation Union);
2. A general discussion, in plenary and in two subsidiary working bodies (SWBs), of legal, technical and other issues related to industrial accidents, hazardous chemicals, and water pollution, especially their transboundary aspects, as well as of educational matters and public awareness;
3. The introduction and examination of proposals suggesting possibilities for further cooperation in light of the general discussion;
4. The drawing-up of conclusions and recommendations for adoption in a report; and
5. Closing plenary statements.

In addition, prior to the meeting, the participating States as well as attending international organizations were invited to circulate written contributions to all other participating States, and several of them did.

One organizational problem which arose in the Sofia meeting was the desire of the European Community (EC) to be recognized in the CSCE as an entity in itself, in addition to the twelve CSCE delegations representing EC-member States. Previously, the EC had attempted to obtain formal recognition in the CSCE, but there has been considerable opposition to the formal recognition of groups of countries in the CSCE process, which would come at

the expense of the concept of individual participation upon which the CSCE is based and owes much of its success. Nevertheless, while refusing to have the EC represented in its own right, the non-EC participating States did allow the table nameplate of France, currently the EC-president, to refer to the European Community as well. No other practices were changed.

Unfortunately, the French reopened and escalated the issue midway in the meeting by insisting that there be some mention of the EC as a co-sponsor of proposals originating within the twelve EC states. A compromise was reached which preserved the CSCE concept of individual participation while recognizing that the 12 co-sponsors were members of the European Community. It was also agreed that none of the practices of Sofia regarding EC recognition would serve as precedent for future CSCE meetings.

#### U.S. Delegation to the Meeting

The U.S. delegation to the Sofia meeting was led by Richard Smith, a Special Negotiator on environmental issues in the State Department's Bureau for Oceans and International Environmental and Scientific Affairs. Reflecting U.S. human rights concerns, Joshua Gilder, a Deputy Assistant Secretary of State for Human Rights and Humanitarian Affairs, was selected as the deputy head of the U.S. delegation. Other State Department officials, experts from the Environmental Protection Agency (EPA), and members of the Helsinki Commission staff, also served on the delegation, with Gerald Scott of the United States Information Agency (USIA) serving as press officer.

As in the past, the United States also appointed three private U.S. citizens to serve as Public Members on the U.S. delegation. They were: Joni Bosh, a member of the Board of Directors of the Sierra Club; Stephen Braverman, an attorney specializing in environmental law with the Philadelphia-based law firm of Baskin, Flaherty, Elliott and Mannino; and Penn Kemble, a senior associate at Freedom House. The presence of these individuals on the U.S. delegation testified to the importance of the CSCE, human rights and the environment both to the U.S. Government

and to the American people. These individuals were very active in Sofia, providing the delegation with valuable expertise and attending many independent environmental activities in addition to the plenary and subsidiary working body sessions of the meeting itself. Upon their return to the United States, they have remained active, informing interested groups and individuals of their experiences while in Sofia.

#### Opening of the Meeting and the General Discussion

The Sofia meeting began with an address by Todor Zhivkov, then President of Bulgaria as well as General Secretary of the Bulgarian Communist Party. Delegations then delivered opening statements in which they stated the importance their governments attached to protecting the environment and presented their objectives for the meeting. A few of these delegations were represented at the ministerial level.

Many Western and some NNA delegations also commented on the context in which the meeting was taking place. Regarding the host country, several delegations criticized the forced assimilation campaign being waged against the ethnic Turkish minority in Bulgaria, as well as against the Pomak, or Bulgarian Muslim, community. As predicted, Turkey's opening statement was the most specific, documenting the denial of religious, cultural and other human rights of ethnic Turks in Bulgaria as well as the brutal reaction of Bulgarian authorities to those who resisted the assimilation campaign. The Turkish statement prompted a Bulgarian response which denied the actual existence of a Turkish minority, explained the mass exodus as a reflection of an open Bulgarian policy on travel abroad, noted that many people were returning to Bulgaria from Turkey, and claimed that Turkey was guilty of major human right violations.

Noting the close relationship between the topics and fields for cooperation covered by the CSCE, human rights violations in other East European countries were raised during opening statements as well, especially by the U.S., West German and British delegations. The head of the U.S. delegation, Richard Smith,

stated in his opening statement that human rights concerns "must be very much in our minds at this meeting, for they are indicative of the political factors underlying the whole of the CSCE process. However much we may be concerned over environmental degradation, sustainable progress on a cooperative basis in this vital area will not be possible unless we take into account the same political factors also affecting respect for human rights, the free flow of information, long-term economic cooperation or any of the other elements of the CSCE process." Smith also stressed the importance of independent activism in ensuring adequate protection of the environment.

During the general discussion which followed the opening remarks, the United States reminded delegates that human rights problems would continue to be a concern throughout the meeting. In a statement by the deputy head of the U.S. delegation, Joshua Gilder, specific Bulgarian human rights violations were raised, not only against ethnic Turks but against Bulgarian human rights activists as well. While acknowledging that all countries face environmental problems, Gilder also argued that, with better information flows, private enterprise and independent activism, free and open societies have a greater ability than repressive, closed societies to clean-up and protect the environment.

Regarding the three environmental fields set forth in the agenda, experts on various delegations exchanged views on the many legal and technical issues surrounding these fields and described the steps taken at national levels in each of them. For example, U.S. statements highlighted the "public right to know" about chemical hazards, as established by U.S. law, and the need to involve local communities in planning for emergency procedures in case of accidents. In a candid presentation, the Soviet delegation acknowledged that the secrecy surrounding past accidents in the USSR, including the Chernobyl nuclear accident in April 1986, was based on mistaken views and policies, and the Soviets described recent efforts, including draft environmental laws, designed to improve this situation. Problems in controlling the pollution of the Rhine and Danube Rivers and other transboundary water bodies were also given considerable attention.

On further steps for cooperation, there was broad agreement that multilateral efforts were needed in Europe, where the practices in one country frequently affect the environment in other countries. On industrial accidents, many pointed to the accomplishments of the Organization for Economic Cooperation and Development (OECD), the United Nations Environment Programme (UNEP) and the World Health Organization (WHO) as a basis for further cooperation among the CSCE participating States on preparedness, prevention and response. While it was generally agreed that it was better to prevent industrial accidents from occurring in the first place and to respond effectively when they do occur, some delegations argued that strong commitments on liability would act to encourage stronger preventive measures and should be considered as well, although this, in turn, raised complicated questions as to who would be liable and for what. On the handling of hazardous chemicals, existing international efforts were again examined, and most discussion centered around how best to monitor hazardous chemicals and to certify that they are being handled correctly. On transboundary water pollution, many raised the need for a framework convention under which bilateral and regional agreements could be developed to protect specific water bodies. Romania argued that accidents resulting from nuclear weapons and nuclear power plants should be discussed as well, but others disagreed since the International Atomic Energy Agency (IAEA) was better able to deal with such issues.

#### Proposals

In light of the general discussion, delegations introduced proposals for future efforts to protect the environment. Thirty-five in all, they focused primarily on the various aspects of the three environmental fields, and the recommendations they made differed according to the priorities of the sponsors.

Most of these proposals were sponsored by one delegation or a group of delegations. While Cyprus on its own introduced proposals on several environmental topics, for example, the "Nordic" delegations--Denmark, Finland, Iceland, Norway and Sweden--introduced proposals covering each of the three main environmental fields, as did the delegations representing the twelve

member-States of the European Community. Reflecting a trend which began in Vienna, however, a few proposals were co-sponsored by delegations from differing groups, such as a proposal introduced by several neutral and non-aligned (NNA) countries on industrial accidents which was subsequently co-sponsored by Hungary and Poland, and a Hungarian proposal on water resources which was co-sponsored by Austria.

The United States delegation introduced one proposal, which focused on independent environmental activism. In light of the increased public concern over environmental degradation in Eastern Europe and the Soviet Union, this proposal addressed the ability of groups and individuals concerned with the environment to exercise their rights to freedom of expression, association and peaceful assembly, as well as to establish and maintain contacts with other environmental organizations. It also committed governments to consider the concerns of these groups and individuals in selecting environmental policies, programs and practices, and to respect the interest of the public in knowing and understanding the environmental conditions which surround them.

As he introduced the U.S. proposal, Richard Smith argued that the intent was to build upon the provision in the Vienna Concluding Document which "acknowledged the importance of the contribution of persons and organizations dedicated to the protection of the environment," and committed the participating States to "allow them to express their concerns." Describing the instrumental role of private groups in seeking better protection of the environment in the United States, he concluded that the "CSCE is not just about building trust, confidence and cooperation between the governments of the participating States but also about building trust, confidence and cooperation between these governments and the people whom they should be serving." Eventually, 19 Western and NNA delegations added themselves as co-sponsors to this proposal, more than for any other proposal introduced in Sofia for consideration in negotiating a concluding document. This widespread support reflected broad agreement that independent activism was vital to protecting the environment, and was partially the result of the reaction of the delegates to actions taken by Bulgarian authorities against several environmental



activists in Sofia during the second week of the meeting. The Soviet delegation at first criticized the proposal as irrelevant to the meeting's mandate, a claim which was rebuffed repeatedly in several subsequent statements of support by other delegations for the proposal.

#### Negotiating a Concluding Report

Most delegations argued strongly that the Sofia meeting should adopt a report which made concrete recommendations, primarily to the ECE, for further multilateral work. The United States and a few other delegations expressed the view that such a report was not critical, but they agreed to try to meld the many ideas contained in the proposals into a report that could be adopted by consensus.

To facilitate this major undertaking, four NNA delegations--Austria, Finland, Sweden and Switzerland--coordinated subsequent negotiations. They organized informal groups to discuss various recommendations made in proposals. As a result, they were able to provide draft papers which reflected possible areas of agreement. Where they did not, the papers were redrafted to the point where consensus seemed possible.

While these negotiations were proceeding, however, the Bulgarian authorities began to harass members of the independent environmental group "Ecoglasnost." On October 26, when this group was prohibited from gathering signatures to a petition in a downtown park, the authorities brutally broke up their march to protest the decision, detaining more than two dozen individuals and beating many of them, as well as a British journalist covering the event. In response, the negotiations were brought to a halt as virtually the entire meeting demanded an explanation for the crackdown. The meeting at this point was on the verge of collapse. The next day, the Bulgarian Environment Minister, Nikolai Dyulgerov, apologized to some extent, admitting that the authorities had overreacted. At the same time, he also sought to place some of the blame on contacts between the activists and members of Western delegations. He assured the delegates that the activities of Ecoglasnost would be tolerated, and the delegates,

satisfied with the response, subsequently resumed negotiations. However, in the third week of the meeting, Western and NNa delegations jointly raised concerns about reports of continued harassment, which, if true, would threaten to deny the meeting a successful outcome. Minister Dyulgerov again responded positively, and the individuals of concern were permitted to resume their activities and to attend closing plenary sessions of the meeting.

In the final days of the meeting, the NNa coordinators combined their papers into a draft final report, which took into account as many views and common elements in proposals as possible. The draft was formally introduced after additional comments and changes were made, but then, on the eve of the meeting's close, the Romanian delegation said that it could not accept the two paragraphs in the draft report on independent environmental activism because of their human rights content. As an alternative, the Romanians offered general language on educating the public about protecting the environment, but Western, NNa and even certain Eastern delegations openly rejected the Romanian position and requested that the Romanian delegation reconsider its position. Deliberations were suspended for nearly a full day as delegates waited for the Romanian delegation to obtain final instructions. During this time, Bulgarian President Zhivkov reportedly telephoned Romanian President Ceausescu twice, urging him to accept the draft in its entirety.

On the morning of the last day, however, Romania withheld its consent to the document because of the two objectionable paragraphs. In response, all 34 other delegations added their names as co-sponsors of the draft so that the record clearly revealed that it was Romania alone that had denied consensus to the report. There was also immediate criticism in the meeting of the Romanian position by a large number of delegations.

#### Closure of the Meeting

With the Romanian delegation rejecting the draft report, the meeting moved to closing statements. Practically every delegation expressed regret that the meeting was denied a document. In his closing statement, Richard Smith stated that "Romania's refusal to

accept these provisions symbolizes the clear disregard of the Romanian government for the human rights and fundamental freedoms it has pledged to respect. This disregard, so clearly evident in Romanian human rights performance, deserves our strongest criticism."

Nevertheless, closing statements highlighted the achievements of the Sofia meeting. They expressed the view that the proposals introduced, as well as the draft report, should be forwarded to the next main CSCE Follow-Up Meeting, which will be held in Helsinki in March 1992. In addition, delegations noted that the proposed recommendations could be raised in the ECE, UNEP and other international environmental bodies, and that governments could also seek to implement them at home. Many delegations also expressed satisfaction with the exchange of views and sharing of experiences among environmental experts which took place during the general discussion.

Human rights issues were again raised by the United States at the meeting's close. By this time, a dialogue between Turkey and Bulgaria over the minority issue had begun in Kuwait, raising hopes that the situation of the Turkish minority would improve. Smith expressed deep concern, however, about "the action taken by authorities in other CSCE States during the past week against those individuals who have sought to exercise their right to peaceful assembly," an indirect reference to the breaking up of demonstrations in the Soviet Union and Czechoslovakia. Smith concluded that "human rights violations such as these must cease if we are to have the true security and cooperation in Europe envisaged in the CSCE."

#### **NGO Attendance and Activities**

All plenary sessions of the Sofia meeting, like all other non-military CSCE meetings mandated by the Vienna Concluding Document, were open to the public, and NGO representatives as well as other private individuals and members of the press were able to observe the proceedings. Unlike the situation at the London Information Forum and the Paris Meeting of the Conference on the Human Dimension, adequate seating was made available for this purpose in the meeting hall itself. Relative to some previous CSCE meetings, these individuals were also given considerable freedom within the confines of the conference center as a whole.

In contrast to CSCE meetings on human rights and other humanitarian issues, the attendance of Western non-governmental organizations in Sofia was small. At the same time, there was a definite NGO interest, not only by those NGOs that traditionally follow the CSCE but by new ones as well, especially those focusing on environmental issues. Several groups, in fact, had submitted background materials for the U.S. delegation's use prior to the meeting.

Of U.S.-based NGOs, a representative of the Campbell Institute was in Sofia for the entire duration of the meeting, and a representative of Friends of the Earth-USA arrived for the closing week. The World Congress of Free Ukrainians and the Lithuanian World Community, both representing their respective ethnic communities in the West, each sent a Canadian citizen to opening week of the meeting. In addition, a delegation of the International Helsinki Federation, which included representatives of Helsinki Watch, was in Bulgaria during the course of the meeting.

A relatively new development in the CSCE evident in Sofia was the presence of an increasing number of individuals from the Soviet Union and several East European countries. Similar to the presence of Public Members on the U.S. delegation, three members of the opposition in Hungary were made members of the Hungarian delegation, one of whom was given the opportunity to

speak in the meeting. Private individuals from Lithuania and Latvia also attended the meeting.

Independent Bulgarian organizations were active during the three weeks of the meeting, and the Bulgarian authorities displayed an unusual degree of tolerance of their activities, allowing an unprecedented degree of independent expression to take place. For example, the unofficial environmental organization Ecoglasnost held regular meetings in a downtown Sofia theater to discuss local environmental problems. These meetings were attended by hundreds of Bulgarian citizens. Although some members of Ecoglasnost and other activists were harassed, detained, expelled from Sofia and even beaten by the authorities in the latter half of the second week of the meeting, a firm stand taken by the delegations to the Sofia meeting led to the suspension of these actions and enabled Ecoglasnost to gather 11,500 signatures to a petition calling for more official openness in discussing environmental problems with the public. This petition was presented to the Bulgarian National Assembly on the closing day of the meeting, in a march that included about 4,000 individuals. In addition, a member of Ecoglasnost, Peter Beron, was made a member of the Bulgarian delegation to the Sofia meeting. It is possible that these developments provided some impetus to the dramatic political changes which occurred shortly after the meeting ended.

The U.S. delegation worked closely with all private individuals and groups present for the Sofia meeting, assisting them in gaining access to the conference center, briefing them on U.S. views of the meeting, listening to their views and concerns, and, in the case of Ecoglasnost, attending the events which they organized.

#### Congressional Activities

While there was considerable congressional interest in the Sofia meeting, the legislative calendar precluded a congressional delegation visit to the meeting. However, Helsinki Commission Chairman Dennis DeConcini met with the head of the U.S. delegation, Richard Smith, just prior to the meeting to discuss U.S. objectives and strategy, and Co-Chairman Steny Hoyer attended an NGO briefing sponsored by the State Department in

which he expressed the Commission's objectives for the meeting. Chairman DeConcini met with the Chairman of the U.S. delegation, Richard Smith, just prior to the meeting to discuss objectives and strategy at the forum.

The Commission also held a hearing on the Sofia meeting and East-West environmental cooperation on September 28. Richard Smith of the Department of State, Gary Waxmonsky of the Environmental Protection Agency, Liz Hopkins of the IUCN, and Vaidotas Antanaitis of the Lithuanian Green Movement presented testimony. Toomas Frey, a representative of the Estonian Green Movement presented a declaration on environmental issues at the hearing as well.

In addition, Helsinki Commission staff director Sam Wise, deputy staff director Jane Fisher and two staff members served on the U.S. delegation to the Sofia meeting.

#### Conclusions

Overall, the Sofia Meeting on the Protection of the Environment achieved a number of notable results. Some of these results include:

- The meeting served as the catalyst for radical political change in the Bulgarian leadership and a move toward democracy.
- Egregious human rights violations by the host country, Bulgaria, were raised and strongly criticized by many delegations, in particular the treatment of the Turkish minority.
- The United States and other delegations made clear that human rights concerns were factors influencing all CSCE meetings. Human rights violations in countries other than Bulgaria were raised in this context, although negative developments in Czechoslovakia and the Soviet Union during the course of the meeting were not specifically mentioned.
- On several occasions, issues regarding independent environmental activism were raised, and the U.S. delegation was able

to introduce a strong proposal on the subject which received considerable support from other delegations. Good language from this proposal was included in the draft report of the meeting.

- The Bulgarians for the most part implemented their commitments in Annex XI of the Vienna Concluding Document regarding the access and openness provided for the meeting. The Secretariat was open to NGO representatives and private individuals wishing to attend the meeting.
- There was a good dialogue among experts on various environmental problems, and many proposals were introduced which suggested ways to solve those problems.
- There was a consensus of 34 countries to adopt a good concluding report that would have formally recommended additional efforts to protect the environment. The language on the rights of independent groups and private individuals seeking better environmental protection represented a considerable advance over some previous CSCE commitments. While the Romanian veto was unfortunate, the draft report was still a considerable achievement.
- The Sofia meeting sparked increased interest in environmental issues among the public in Bulgaria, and interested private individuals from other Eastern countries took the time to come to Sofia and attend the meeting.
- The activity of private Bulgarian activists initiated broadened human rights activism among the population at large, which in turn may have contributed to subsequent political changes in Bulgaria.
- The Public Members on the U.S. delegation made an outstanding contribution to the U.S. effort, providing their expertise, engaging in a wide range of activities and pursuing related efforts upon their return to the United States.

The Sofia meeting took place in the context of a Europe that is changing for the better. Nevertheless, problems remain in many CSCE fields, including both human rights and environmental protection. The degree to which the Sofia meeting may contribute to resolution of these problems will be the true judge of its success.

**Post-script on the Sofia Meeting**

In early 1990, the new Romanian leadership withdrew its objections to the draft Sofia report. In November 1990, the participating States, meeting on the margins of the negotiations on Confidence- and Security-Building Measures in Vienna, formally adopted the Sofia Document.



**THE BONN CSCE CONFERENCE  
ON  
ECONOMIC COOPERATION IN EUROPE**

**Summary**

From March 19 to April 11, 1990, the 35 States participating in the Conference on Security and Cooperation in Europe (CSCE) convened a Conference on Economic Cooperation in Europe. This conference, held in Bonn, the Federal Republic of Germany (FRG), was attended by representatives of the business communities of the participating States in addition to governmental officials. Mandated by the Vienna Concluding Document, the major focus of the conference was on creating better conditions for Western business representatives working in Eastern countries, including better facilities and more economic and commercial information. There was also considerable discussion of economic reform efforts underway in the Soviet Union and the countries of Eastern and Central Europe, including descriptions of the legal parameters for foreign investment and joint ventures as well as efforts to make currencies in nonmarket-economy countries convertible. The conference was a useful forum for the private individual attending to establish contacts and raise practical problems regarding the conduct of business relations.

The Bonn Conference ended with the adoption by consensus of a concluding document, the first such document produced at a subsidiary CSCE meeting other than on military-security issues since 1984. Among the notable provisions of this landmark document are a list of principles on economic cooperation, based on a U.S. proposal, which include establishing democratic political systems, respecting workers' rights, allowing market forces to determine prices, protecting private property rights, and considering environmental questions in economic development. The document also contained a number of practical steps to facilitate the conduct of business relations.

The Bonn Conference took place in the aftermath of the political upheavals in Eastern Europe, the initiation of steps leading toward the unification of Germany, and statements sup-

porting an increased role for the CSCE in efforts to maintain stability in a fast-changing Europe. These developments were very evident during the course of the meeting and contributed to its successful outcome. Similarly, the Bonn Conference and the document adopted there will likely contribute to further positive developments leading to a prosperous and undivided Europe.

#### **Negotiating History of The Bonn Economic Conference**

Economic cooperation, along with scientific and environmental cooperation, is covered in the second chapter--or "Basket II"--of the Helsinki Final Act, the document signed by the 35 leaders of the participating States in 1975 which initiated the process of CSCE follow-up meetings. For most of CSCE's history, Basket II did not received much attention, but, beginning at the third main follow-up meeting in Vienna in November 1986, economic and environmental issues in particular became a major part of the CSCE negotiations.

The FRG had first suggested that a conference on East-West economic cooperation be held within the framework of the CSCE during the preparations for the Vienna Meeting. It was introduced as an idea with strong support from both West German Chancellor Helmut Kohl and Foreign Minister Hans-Dietrich Genscher. By the time it was formally proposed in Vienna, in March 1987, it had the support of the 12 members States of the European Communities as well as of Norway. Eastern countries supported a similar, Czechoslovak proposal for an Economic Forum to be held in Prague.

From the time it was first suggested to the very conclusion of the Vienna Meeting, the United States expressed serious reservations about the FRG proposal. Among the arguments against the proposal were the fact that the conference would: duplicate work in other multilateral and bilateral fora; provide Eastern countries with a forum to attack COCOM restrictions and other Western trade policies which they did not like; give a political endorsement of East-West trade in general at a time when a differentiated approach was preferable; and turn more into a trade fair for the conclusion of business deals than a meeting to encourage econo-

mic reform. The United States and some other Western and neutral countries argued that increased trade would come about in the long run not as a result of Western governmental support or encouragement, such as through a politicized economic conference, but as a result of the restructuring of the Soviet and East European economic systems which would make Eastern goods more competitive in Western markets and foreign investment in these countries more attractive.

These arguments were all presented in the context of the need for balanced progress within the CSCE process and the need to focus less on additional meetings and more on actual implementation of Vienna provisions. Given the heavy emphasis on military-security issues at the Vienna meeting and the plethora of other proposals for follow-up meetings, it was felt that an economic conference, particularly the high-level and elaborate one proposed by the FRG, would further squeeze human rights in the CSCE process. In addition, the United States announced its opposition to Prague as the site for this or any other CSCE meeting due to actions taken by Czechoslovak authorities against dissidents, including Vaclav Havel, in November 1988.

Nevertheless, in January 1989 the United States dropped its objections to the Bonn proposal in light of the overall positive result that was being achieved at the Vienna Meeting. It also insisted on certain modifications of the proposal, including shortening it from 5 to 4 weeks (in line with other CSCE subsidiary meetings) and eliminating a mandated second-stage meeting of ministers to adopt a concluding document (which would have denied the conference the ability to decide itself if such a conclusion was warranted).

After giving consensus to the Bonn Economic Conference, the United States remained concerned about its implications while violations of human rights in the Soviet Union and East-Central Europe continued to take place. Following the major political changes in Eastern Europe and further Soviet implementation of its CSCE commitments in 1989, however, the conference was viewed in a new light. With increased economic cooperation now more desirable and economic reform possible, the United States

and others now saw the conference as a useful opportunity to focus attention on the need for the development of private/cooperative economic activity in the Soviet Union and Eastern Europe as well as other reform measures. In addition, there was continued interest in emphasizing traditional Basket II items, such as better conditions for business representatives and more and better economic and commercial information, which remain problems in East-West commercial relations.

#### **Organization of the Conference**

While government policies relating to trade are discussed in international economic institutions such as the GATT and bilateral negotiations, the agenda for the Bonn Conference focused on practical steps which could be taken to facilitate trade between East and West, especially in those areas considered in Basket II of the Helsinki Final Act and subsequent CSCE documents.

The agenda devoted considerable attention to the development of business contacts, working conditions for business people, and the availability of economic and commercial information. It also covered the legal and other parameters for investment, joint ventures and other forms of industrial cooperation. Poor Eastern performance in these areas of Basket II has hampered East-West trade over the years, but efforts to provide greater openness to the Soviet and East European economies in the months prior to the Bonn Conference held out the possibility for progress.

The agenda for Bonn also provided for the examination of possibilities for cooperation in industries such as agro-industry and environmental protection equipment. Another agenda item focused on monetary and financial questions, including currency convertibility.

Each of these agenda items were scheduled for meetings of subsidiary working bodies during the course of the conference. In addition, the FRG hosts arranged for a series of information meetings at the conference center where representatives of the business communities could follow-up discussions held in the

formal meetings. There were also plenary sessions at the beginning and end of the conference opening and closing statements.

#### **U.S. Delegation to the Conference**

The U.S. delegation to the Bonn Economic Conference was led by Alan Holmer of the Chicago-based law firm of Sidley and Austin. Holmer had previously served as Deputy U.S. Trade Representative from 1987 to 1989, as well as General Counsel to the U.S. Trade Representative and Deputy Assistant Secretary of Commerce for Import Administration. John Evans, a foreign service officer in the Department of State, served as the deputy head of the U.S. delegation. Other State Department officers, experts from the Department of Commerce, representatives of the Department of Defense, and members of the Helsinki Commission staff also served on the delegation, with the U.S. Embassy in Bonn providing support with administrative and press personnel.

In line with the mandate for the conference, which called for the presence of representatives of the business communities of the participating States, the U.S. delegation also included a number of business people, economists, financial experts and trade lawyers who participated in the conference. Unfortunately, U.S. private-sector participation was not as large as that of many other delegations, and the Department of State originally was hesitant to encourage active involvement of these individuals in the formal discussions. Nevertheless, as the conference progressed and the procedures became more flexible, U.S. private representatives made up for their fewer numbers with their thorough presentations of U.S. business views and concerns.

#### **The General Debate**

The Bonn Economic Conference was opened by FRG Chancellor Helmut Kohl, who stressed the increased importance both of economic cooperation and the CSCE process in promoting positive change in Europe. Speaking the day after the first free elections in East Germany, he also commented positively on the prospects for German unification.

Opening statements were then given by each of the participating States. In his opening statement, U.S. Ambassador Holmer stressed the historic times in which the Bonn Conference was taking place. In defining the U.S. approach to economic cooperation, he noted the relationship between effective economic systems and democratic political systems, the influence of domestic economic measures on international trade activity, and the difficulties involved in the transition from a command economy to one that is mixed or based on free markets. On the work of the conference, he concluded: "On the heels of the political and economic revolutions of 1989, now is not the time to be timid. We have relatively little interest in a non-substantive conference that only tinkers at the margins of the issues before us."

Following the opening statements of the participating States as well as two invited organizations, the United Nations Economic Commission for Europe and the International Chamber of Commerce, the meeting broke down into subsidiary bodies to discuss the specific items on the agenda. In contrast to the heated exchanges which have transpired in CSCE meetings of the past, the discussions in Bonn had a positive tone to them, reflecting the many encouraging developments that have been taking place. The Soviet and East-Central European delegations detailed their many reform efforts but were candid in admitting that many economic problems remain, to some of which they had few if any answers. Although there were some criticisms of existing COCOM and other Western restrictions on trade, such criticisms were not raised in a polemical way. Most Soviet and East-Central European statements refrained from turning the agenda away from practical economic measures to facilitate trade to larger foreign and trade policy questions.

Western statements, by both governmental officials and by private-sector participants, acknowledged efforts underway to reform the non-market economies of the USSR and East-Central Europe. At the same time, most statements concluded that much more needs to be done and that, despite the difficulties of transition, the development of free markets and private enterprise was essential to long-term prosperity.

Western statements also detailed smaller steps that would liberalize the conduct of commercial relations. For example, one U.S. private sector participant, with the assistance of others, drew up a list of economic and commercial information, including various macro- and micro-economic statistics, which would be useful to the Western business community but is still unavailable, inaccurate or outdated in many Eastern countries. Others pointed to laws and regulations which overly restrict the parameters for foreign investment in these countries. Numerous examples were given of problems in obtaining suitable office space, the relatively high costs of such space, and the inadequacies of telecommunication equipment and other technical needs.

The delegations of those countries subject to this criticism of their Basket II performance, especially the Soviet delegation, seemed to listen carefully to these comments, welcomed the candor of the private sector participants, and answered them as best they could, noting at times what the West could do to help the situation.

On the sectors for cooperation, specifically energy, environment, agro-industry/food processing, consumer goods and town planning, many delegations outlined what they viewed as the prospects in each specific field, with good U.S. private-sector statements in most of them. Overall, there seemed to be a strong desire to increase cooperation in these fields but some speakers noted economic and financial constraints on any significant expansion of cooperation in all areas.

In a statement that was welcomed by other delegations, the Romanian delegation used the Bonn Conference to state for the record that it supported the entire draft document of the Sofia Meeting on the Protection of the Environment, which was held in October and November of last year while Ceausescu was still in power. At that time, Romania was the only country to deny consensus to the document, and it did so because of two paragraphs which dealt with the rights of independent environmental activists to make their ecological concerns known. With Romania's objection removed, the participating States intend to

pursue the document's implementation, including in international organizations such as the Economic Commission for Europe.

#### **Proposals**

Fewer proposals were introduced at the Bonn Conference than at most CSCE meetings. The primary reason for this was that, in the weeks leading up to Bonn, the 12 CSCE States which are members of the European Communities (EC-12) prepared and circulated a comprehensive draft concluding document to be adopted by the meeting. Ireland, as President of the EC-12, formally introduced this draft as a proposal in the opening days of the meeting. This preempted the normal pattern of negotiations in the CSCE, in which specific proposals are first introduced and discussed and then combined in a draft concluding document. Given the shortness of the meeting, the EC-12 effort had the advantage of facilitating the eventual informal negotiations of a final document. At the same time, unlike strongly worded proposals, it presented compromises on some issues even before there was any discussion of what might be acceptable.

The only other major proposal introduced in Bonn was by the United States. While supporting the EC proposal for a concluding document, the U.S. delegation argued that, as in other fields covered by the CSCE, a set of principles for economic cooperation would be useful in guiding East-West trade. It therefore tabled a proposal listing 10 principles which complemented the practical measures specified in the EC draft. As stated in the proposal, these principles were:

1. Multi-party democracy based on free, periodic and general elections.
2. The rule of law and equal protection of the law based on respect for human rights and effective, accessible and just legal systems.
3. Economic activity that does not involve forced labor or discrimination against workers on political, ethnic, gender or



religious grounds, or denial of the rights of workers to form and join independent trade unions.

4. Sound fiscal and monetary policies.

5. International and domestic policies which support the expansion of free and open trade, investment and unrestricted capital flows, and free transfer of capital and profits in convertible currency.

6. Free and competitive market economies in which supply and demand determine prices.

7. Full recognition and protection of the rights of citizens to hold and use private property, including intellectual property rights.

8. Unhindered exchange of goods and services among companies--whether private or state-owned--and individuals in both domestic and international markets, including direct contacts with customers and suppliers.

9. Prompt payment of adequate and effective compensation in the event of private property being taken for public use.

10. National economic objectives focused on productivity rather than simply production.

Other proposals were introduced by other delegations. Most listed desired amendments to the EC draft, while some dealt with more specific topics and were later reworded as amendments to the draft concluding document.

#### Negotiating a Concluding Document

From the time a CSCE meeting on economic cooperation in Europe was first proposed, the West German government and many other governments indicated their desire to have a document at such a meeting adopted. Others, including the United States, were skeptical about the utility of documents at any subsidiary

meetings as long as the provisions of the Helsinki Final Act, the Madrid Concluding Document and, most recently, the Vienna Concluding Document, were being blatantly violated. As long as this was the case, it was argued, stress should be kept on a thorough and frank review of implementation at these meetings. In the absence of major, new human rights documents, moreover, a document in the field of economics became even less desirable for some if balanced progress in the CSCE process was to be maintained.

By the time the Bonn Conference convened, however, things had changed so dramatically on the European scene that all countries felt that the adoption of a document was a desired result. There were several reasons for this. First, the progress that has been taking place in the Soviet Union and in East-Central Europe has overtaken some CSCE commitments, making a statement of new goals to be reached not only desirable but necessary. A second and related reason was that such a statement was now possible, whereas consensus on ambitious, new commitments at previous meetings could not be reached. Third, as mentioned earlier, the West German hosts wanted a document which would symbolize a successful conference, especially with trade and economic ministers planning to attend the closing of the conference. Finally, and in some ways perhaps the most immediate reason for some countries, including the United States, to seek agreement to a document was a desire to demonstrate progress in all areas of the CSCE leading up to a summit meeting of participating States later in the year.

From the start, practically every delegation stated that it could support the EC-12 proposed draft document, which needed only a few amendments, as the basis for negotiations at the Bonn Conference. With neutral and non-aligned delegations coordinating informal negotiations to obtain full agreement to a final text began early in the conference. The United States offered several amendments to strengthen the document in areas where more ambitious commitments were certainly possible. The United States and some other non-EC delegations, furthermore, sought to weaken or eliminate references in the draft document that would favor EC-12 projects at the expense of projects in which non-EC

States would have equal interest. The Soviet Union, on the other hand, proposed several amendments to weaken the text, taking a line that many thought represented "old-thinking" given the major economic changes being announced in Moscow at the same time.

Still, the EC-12 document contained many compromises from the very beginning, and reaching agreement to a text based on this draft was not a difficult exercise. Somewhat more difficult, however, was the insertion of the U.S.-proposed economic principles, which would strengthen the document considerably. Through a series of bilateral discussions, the U.S. delegation was able to get agreement by practically every delegation, including those of the East-Central European countries, to the principles with only a few changes. Most of these changes actually served to improve the set of principles, such as the addition of a much-needed reference to environmental protection.

The main holdout was the Soviet Union, which had stated early in the conference that it would accept no reference to private property in a final document. Fears of the meeting ending without any document led many delegations to seek to convince the United States that it should withdraw its principles. They argued that it was still too early to press the Soviets on this key issue and that doing so could threaten Gorbachev. The U.S. delegation held firm, maintaining that the Soviets needed to be pressed on this point, which, in fact, would seem to support Gorbachev's proclaimed goals for the USSR.

In the end, the Soviet delegation's position proved largely tactical, and the principles were included in the concluding document. A few additional changes were made, but the principles, including a reference to private property rights, remained. At this stage, the neutral and non-aligned coordinators put together a new draft, which included the accepted amendments to the EC-12 draft and the economic principles, which was then adopted as the concluding document of the Bonn Economic Conference.

#### **Closure of the Meeting**

The closing of the Bonn Conference was attended by economic or trade ministers from every participating State. U.S. Commerce Secretary Robert Mosbacher, however, was unable to attend; instead the United States was represented by Richard McCormack, Under Secretary of State for Economic and Agricultural Affairs. In his statement, McCormack read a message to the conference from President Bush saying that "concrete steps such as this Economic Conference will result in an improved standard of living . . . for all of us." FRG President Richard von Weizaecker and Foreign Minister Hans-Dietrich Genscher also addressed the conference during the closing sessions.

#### **NGO Attendance and Activities**

All plenary and subsidiary body sessions were open to the press and public, and the West German hosts provided excellent facilities and were extremely open to the attendance of interested non-governmental organizations (NGOs), the press and other private individuals. On several occasions, school groups even came to observe the proceedings, and the conference received considerable coverage in the European press and, to some extent, in the U.S. press as well.

Since many private-sector individuals who would have been interested in attending the Bonn Conference were actually made members of delegations, as stipulated in the mandate, there were nevertheless not a large number of NGOs present at the Bonn Conference. Three individuals representing the World Federation of Free Latvians, however, did attend. They met with several delegations to discuss the situation in the Baltic States generally, and in Latvia in particular, and circulated a set of proposed guidelines for trade and joint ventures in Latvia.

#### **Congressional Activities**

As with other CSCE meetings, there was congressional interest in the Bonn Conference. For example, the Chairman of the Helsinki Commission, Senator Dennis DeConcini (D-AZ), spoke to a briefing for interested non-governmental organizations at the

Department of State prior to the conference. A congressional delegation--led by Representative Bill Richardson (D-NM), a Helsinki Commissioner, and including Senator Paul Sarbanes (D-MD) and Representatives John Bryant (D-TX), David Skaggs (D-CO) and Jack Buechner (R-MO)--attended the opening of the Bonn Conference on its return from a visit to the German Democratic Republic, where it had observed the elections. In addition, members of the Helsinki Commission staff actively participated in the conference as members of the U.S. delegation.

### Conclusions

Overall, the Bonn Economic Conference was a success. The contacts and dialogue which developed between government officials and private-sector participants provided a greater understanding of problems which exist in the conduct of trade and business relations. In addition, the adoption of the final document was a major achievement in the CSCE process. It was the first document to be adopted at a subsidiary CSCE meeting other than on military-security issues since 1984. Its provisions included both guiding principles and practical measures, the implementation of which would lead to the enhancement of commerce between East and West. It also contained the first CSCE commitments to issues such as multi-party democracy, the rule of law, and certain workers' rights, and the many references to environmental issues demonstrated increased willingness to take needed actions in this critical area.

On the other hand, the United States could have sought a larger representation at the conference from its business community, although those who did attend more than made up for their small numbers. One concern of several participating States which developed in Bonn was the increased dominance of the EC-12 as a bloc in the CSCE process. Finally, the tense situation between Lithuania and the Soviet Union was beginning to develop during the course of the Bonn Conference, but this Helsinki-related issue received little attention in the conference itself.

The true success of the Bonn Economic Conference will be revealed well after its close, as the provisions adopted are imple-

mented. Some of these commitments require economic adjustments which will take time to put in place. Economic imperatives and continued monitoring, however, should keep the Soviet Union and the countries of East-Central Europe moving in a positive direction.

## **THE COPENHAGEN MEETING OF THE CONFERENCE ON THE HUMAN DIMENSION**

### **Summary**

In accordance with the mandate of the Vienna Concluding Document, the thirty-five states participating in the Conference on Security and Cooperation in Europe (CSCE) met in Copenhagen from 5 through 29 June 1990 for the second meeting of the Conference on the Human Dimension (CHD) of the CSCE. The first CHD meeting was held in Paris from 30 May through 23 June 1989, while the third meeting is scheduled to take place in Moscow from 10 September through 4 October 1991. The meetings of the CHD address the full range of human rights and humanitarian concerns encompassed within the Helsinki process.

At the Copenhagen Meeting, Albania joined the CSCE process for the first time as an observer. In contrast, requests by the three Baltic States to be granted observer status were not acted upon favorably.

The U.S. objectives for the Copenhagen Meeting were largely accomplished. The main elements of the meeting are summarized below.

***Level of Representation:*** With strong urging from the Helsinki Commission, Secretary of State James A. Baker attended the opening of the Copenhagen Meeting, along with the Foreign Ministers of most of the other participating States. The U.S. delegation was ably chaired by Ambassador Max Kampelman, who had led the U.S. delegation to the Madrid Follow-up Meeting (1980-83).

***Implementation Review:*** There was a review of the implementation of existing CSCE commitments by the United States, along with other delegations, throughout the meeting. Dramatic improvements in many countries were noted, although the U.S. as well as other delegations also raised continuing human rights problems and humanitarian concerns. Nevertheless, delegations evidenced considerable uncertainty regarding how implementation

issues should be approached in what was agreed to be a markedly different political climate.

***The Human Dimension Mechanism:*** The so-called "human dimension mechanism" was established in the Vienna Concluding Document in order to provide a formal diplomatic framework for participating States to raise cases and situations with each other. In the six months prior to the Copenhagen Meeting and in the wake of the Eastern Europe's "revolutions," it was rarely used. Nevertheless, the participating States concluded that the mechanism was still a valuable tool and agreed on ways to improve its functioning. The United States used the mechanism during the meeting to request information from the Romanian delegation regarding the use of force to break up peaceful demonstrations in Bucharest in mid-June. The Romanian delegate responded by reading a cable prepared in Bucharest, apparently in anticipation of the condemnation by CSCE governments which the use of force would elicit.

***Public Members:*** Ten private citizens, respected for their involvement in the promotion of human rights and their expertise relating to the CHD, were appointed as Public Members to the U.S. delegation. They were active in all phases of the meeting and added considerable expertise and insight to the delegation's efforts. Their work exemplified the interdependence of the U.S. public and the U.S. Government in CSCE affairs.

***NGO Activities:*** Representatives of numerous non-governmental organizations (NGOs) attended the Copenhagen Meeting, including many from the United States. For the first time in a CSCE human rights meeting, there was significant uninhibited participation by NGOs from Central and Eastern Europe as well as the Soviet Union. NGOs engaged in numerous activities, including press conferences and an extensive series of human rights-related "parallel activities" (conferences, seminars, etc.) organized by Danish NGOs. Individuals from all participating States were able to travel to Denmark to attend the meeting, with the exception of one refusenik who was denied an exit visa by the Soviet government.



The U.S. delegation worked closely with NGOs, listening to their views and concerns, briefing them about developments in the meeting, and assisting them in gaining access to the conference center, in arranging press conferences, and in meeting with other delegations. There were very few problems regarding openness and access to the conference center. A Chairman's statement underscoring the importance of openness and access to CSCE meetings for NGOs and the press was adopted at the end of the meeting.

**Public Diplomacy:** The United States made a strong effort to publicize the Copenhagen Meeting. While there was relatively little coverage by the general media in the United States, the meeting was extensively covered by the NGO press, Radio Free Europe/ Radio Liberty, and the European press.

**Commission Involvement:** The Helsinki Commission played an active role both in the preparations for the Copenhagen Meeting as well as during the meeting. Co-Chairman Steny H. Hoyer led a congressional delegation to Copenhagen. During the visit, he addressed a plenary meeting, and his delegation held several bilateral meetings with other specific delegations and had extensive consultations with representatives of other participating States. The Commission's Deputy Staff Director, Jane Fisher, served as a Deputy Head of the U.S. delegation, and Commission staff served as members of the delegation, participating in all aspects of the meeting.

**Proposals:** Many of the proposals introduced at last year's CHD meeting in Paris were revived or revised for Copenhagen, including a U.S. proposal on free elections and political pluralism. Originally introduced at last year's Paris Meeting by Co-Chairman Hoyer on behalf of the U.S. delegation, this proposal took on heightened importance in light of this year's historic elections in Central and Eastern Europe, the Baltic States, and the Soviet Union. In all, the thirty-five participating States introduced a total of forty-three proposals covering virtually every aspect of the human dimension.

**Document:** At the end of the meeting, a document was adopted. The Copenhagen Document is built on the central premise that "pluralistic democracy and the rule of law are essential for ensuring respect for all human rights and fundamental freedoms." The document expresses the participating States' "determination to build democratic societies based on free elections and the rule of law." Most notably, its provisions regarding what constitutes a *system of democracy* in which civil and political rights may be guaranteed mark a significant step forward in the field of human rights. Highlights of the key provisions follow.

**Democracy and the Rule of Law (paragraphs 1 - 5.21)**

- The CSCE participating States identified the protection of human rights and fundamental freedoms as one of the basic purposes of government and reaffirmed that recognition of these rights and freedoms constitutes the foundation of freedom, justice and peace.
- They acknowledged that democracy is an inherent element of the rule of law.
- They declared that the elements of justice which are essential to the full expression of the inherent dignity and of the equal and inalienable rights of all human beings include (in addition to protections of civil and political rights):
  - a form of government that is representative in character, in which the executive is accountable to the elected legislature or the electorate;
  - the duty of the government and public authorities, which are not above the law, to comply with their constitution;
  - a clear separation between the state and political parties; in particular, political parties may not be merged with the state (the "no establishment clause" for political parties);
  - military forces and police under the control of, and accountable to, the civil authorities;
  - independent judges and impartial operation of the public judicial service.

#### Free and Fair Elections (paragraphs 6 - 8)

- The participating States declared that the will of the people, expressed through periodic and genuine elections, is the basis of the authority and legitimacy of government.
- To that end, they will respect the right of individuals and groups to establish freely political parties and organizations and enable them to compete with each other on a basis of equal treatment before the law and the authorities;
- Recognizing that the presence of observers, both foreign and domestic, can enhance the electoral process, they agreed to invite governmental and non-governmental observers for national elections.

#### Human Rights and Fundamental Freedoms (paragraphs 9 - 29)

- In elaborating on the right of the individual to know and act upon human rights and fundamental freedoms, the participating States agreed to respect the right of everyone, individually or in association with others, to seek, receive, and impart freely views and information on human rights and fundamental freedoms, including the right to disseminate and publish such views and information; the right to seek redress for human rights violations with the assistance of counsel; and the right to communicate with international bodies regarding human rights abuses.
- They underscored that in a democracy any restrictions on human rights and fundamental freedoms must be truly exceptional and consistent with a state's international obligations.
- They confirmed that, even in a state of emergency, any derogations from such obligations must strictly remain within the limits provided for by international law.

#### Minority Rights (paragraphs 30 - 40.7)

- The participating States affirmed that respect for the rights of persons belonging to national minorities is an essential factor for peace, justice, stability, and democracy. They condemned totalitarianism, racial and ethnic hatred, anti-semitism and all manifestations of xenophobia and discrimination against anyone, as well as persecution on religious and ideological grounds.

- They committed themselves to protect the rights of persons to freely, express preserve and develop their ethnic, cultural, linguistic, and religious identity and maintain and develop their culture free from involuntary assimilation, including the right to use freely their mother tongue, to establish and maintain their own cultural and religious institutions, and to establish and maintain organizations or associations within their country and to participate in international non-governmental organizations.
- They further recognized the rights of minorities to establish and maintain contacts among themselves within their country and across international frontiers.
- They committed themselves to respect the right of persons belonging to national minorities to effective participation in public affairs, including affairs relating to the protection and promotion of the identity of such minorities.

#### **Background to and Organization of the Meeting**

The CHD concept (also known by its French initials as "CDH") originated in the negotiations of the Vienna CSCE Follow-up Meeting (November 1986 - January 1989). During these negotiations, Western countries, especially Denmark, France, the Netherlands, Canada, the United Kingdom, and the United States, sought to elevate the status of human rights and other humanitarian issues within the CSCE for two interrelated reasons. First, Soviet and East European human rights performance, despite some improvements, continued to be well below CSCE standards. Second, the prospects for new negotiations on both conventional armed forces in Europe and on Confidence- and Security-Building Measures promised to enhance the military-security aspect of the CSCE greatly, thus threatening to upset the long-standing balance between the humanitarian and the military-security aspects of the CSCE.

The NATO countries therefore adopted a proposal based on a draft of the European Community to combine the relevant parts of the Principles section of Basket I and Basket III (encompassing human rights and humanitarian concerns) into one conference on "the human dimension" which would meet once each year between

the Vienna Meeting and the next main follow-up meeting, in Helsinki in 1992.

As a group, the Eastern countries did not express much interest in such a conference. Early in the Vienna Meeting, however, the Soviet Union tabled its own proposal for a Conference on Humanitarian Cooperation, to be held in Moscow and to focus on Basket III issues alone. During the ensuing two years of intense negotiations, the Eastern countries accepted the broader CHD concept, while the Western countries agreed to hold the third meeting of the CHD in Moscow in 1991. The first meeting was set for Paris in 1989, and the second for Copenhagen in 1990.

All three CHD meetings have the same agenda, which, in brief, consists of the following:

- 1) Opening statements;
- 2) A review of implementation of CSCE commitments;
- 3) A discussion of the "human dimension mechanism" (see sections 6 and 9d below for a review of the mechanism) in both plenary sessions and in Subsidiary Working Body A (SWB-A);
- 4) The introduction and consideration of proposals in plenary sessions and in Subsidiary Working Body-B (SWB-B);
- 5) Concluding statements.

The mandate for the CHD provided that concluding documents could be adopted for each of the three meetings if the participating States at the meetings decided to do so. As with all other non-military CSCE meetings mandated by the Vienna Concluding Document, the plenary sessions of the CHD are open to the public. The Danish Government, as host to the Copenhagen Meeting, was responsible for the openness and access to the meeting on the part of individuals, either representing themselves or non-governmental organizations, or as members of the press, in

accordance with the commitment contained in Annex XI of the Vienna Concluding Document.

**U.S. Delegation to the Meeting**

With strong urging from the U.S. Helsinki Commission, Secretary of State James A. Baker attended the opening of the Copenhagen Meeting. The U.S. delegation was led by Ambassador Max A. Kampelman, who had previously distinguished himself as head of the U.S. delegation to the Madrid CSCE Follow-up Meeting (1980-83).

John Evans, of the State Department, served as principal deputy head of delegation. Paula Dobriansky, Deputy Assistant Secretary for Human Rights and Humanitarian Affairs of the Department of State, and Jane Fisher, Deputy Staff Director of the Commission on Security and Cooperation in Europe, also served as deputy heads of delegation.

The United States appointed ten U.S. citizens prominent in the field of human rights to serve as Public Members on the U.S. delegation. The presence of these individuals on the delegation underscores the importance of the CSCE and of human rights both to the U.S. Government and the American people. The public members provided the delegation with valuable expertise in areas under discussion in Copenhagen as well as enhanced contacts with various non-governmental organizations and interest groups concerned with the Copenhagen Meeting. The Public Members were:

- Prof. Thomas Buergenthal, George Washington National Law Center
- Ms. Catherine Cosman, Helsinki Watch
- Mr. Larry Garber, Senior Consultant, National Democratic Institute
- Mr. Michael Haltzel, Director, West European Program, Woodrow Wilson International Center
- Prof. Hurst Hannum, Fletcher School of Law and Diplomacy
- Mr. David Harris, Director, American Jewish Committee
- Mr. Mado Kari, President, Baltic World Council

- Prof. Theodore Meron, New York University Law School
- Ms. Carol O'Hallaron, Doctoral Candidate, Cambridge University, U.K.
- Mr. George Weigel, Jr., President, Ethics and Public Policy Center

#### **U.S. Objectives for the Meeting**

The United States had several objectives for the Copenhagen Meeting. In line with past practice, the United States sought a frank and objective review of implementation of CSCE commitments, citing illustrative cases and specific situations and discussing the utility of the human dimension mechanism in this context. The United States held the view, shared by many other delegations, that recent historic changes in Eastern Europe and the Soviet Union deserved to be acknowledged and commended. At the same time, the United States believed that difficult issues should not be avoided and a review of persistent or new problems should not be neglected.

The United States also believed that a window of opportunity existed to obtain consensus on proposals which had been rejected by the East at previous meetings, as well as on fundamentally new proposals. In addition, some Eastern countries, now led by members of their former opposition movements, urged the acceptance of a document which would both reflect the region's democratic revolutions and contain commitments that would make potential back-sliding more difficult. Thus, the United States supported the adoption of a document which would meet these criteria. In particular, the United States believed that strong commitments in the areas of free elections, rule of law, and minority rights had to be embraced by a Copenhagen Document if it was to gain the consensus of the United States.

#### **Opening of the Meeting and Implementation Review**

The Copenhagen Meeting was held in the Bella International Conference Center. The opening was attended by Her Majesty the Queen of Denmark and His Royal Highness the Prince. The Foreign Ministers of most of the thirty-five participating States

were present, including U.S. Secretary of State Baker. In addition, a message of greeting from Czechoslovak President Vaclav Havel was transmitted to the meeting.

At the outset of the meeting, Danish Foreign Minister Uffe Ellemann-Jensen noted the mandate to convene a preparatory conference to open in Vienna on 10 July 1990 to establish the agenda, timetable, and other organizational modalities for a CSCE summit to be held in the fall of 1990. Foreign Minister Ellemann-Jensen also noted Secretary Baker's invitation to hold a CSCE ministerial meeting in the margins of the United Nations General Assembly meeting in New York City in September or October of 1990.

On the first day of the meeting, the Chairman of the day (in this case, the representative of the host country, Danish Foreign Minister Ellemann-Jensen) announced that he had been informed that "the Albanian government, by virtue of paragraph 54 of the Final Recommendations of the Helsinki Consultations [the so-called "Blue Book" of procedures for the Helsinki process], had expressed the wish to attend the Copenhagen Meeting as an observer." Foreign Minister Ellemann-Jensen made an announcement to this effect and, without objection or comment from any other delegations, the meeting proceeded on this basis.

Subsequently, it was learned that Latvia, Estonia and Lithuania had made similar petitions to the Secretariat, also based on paragraph 54 of the Blue Book. In those cases, the Danish Executive Secretary indicated to the Baltic representatives that consensus to give the Baltic States observer status had not been obtained from all thirty-five participating States.

Paragraph 54 of the Blue Book states,

All European States, the United States and Canada shall be entitled to take part in the Conference on Security and Co-operation in Europe. If any of these States wishes to attend as an observer it may do so. In that case, its representatives may attend all stages of the Conference and of its working bodies, but shall not



participate in the taking of decisions. Such a State may decide later to accept these decisions or some of them under the conditions defined by the Conference.

It appears that the Danish Secretariat interpreted paragraph 54 of the Blue Book as entitling Albania to join the CSCE process as an observer at any time. The thirty-five participating States, having given consensus to this provision, were understood by the Danish Secretariat to have given consensus to its result. The Danish Executive Secretary, C.U. Haxthausen, provided no public explanation as to why he believed no consensus was necessary to admit Albania as an observer while he believed that consensus *was* necessary to admit the three Baltic States. However, it appears he believed that a consensus as to whether or not the three Baltic States were indeed "European States" was necessary before paragraph 54 could apply. In this case, the Danish Secretariat bowed to the Soviet position that Latvia, Estonian, and Lithuania are not independent. Despite the many opportunities which were present throughout the meeting, no delegation challenged the Secretariat on this point.

In fact, the United States and many other CSCE participating States do not recognize the Soviet incorporation of the Baltic States. This position is consistent with Principle IV of the Helsinki Final Act ("No such occupation or acquisition [by military or other direct or indirect measures of force in contravention of international law] will be recognized as legal"), by which all thirty-five participating States are bound.

In formulating its position, the Danish Secretariat did not seem to consider paragraph 55 of the Blue Book, which states,

States referred to in the first sentence of the paragraph above [i.e., paragraph 54] wishing to participate in the Conference or to attend as observers must so inform the Finnish Government at the latest on 25 June 1973.

This "sunset clause" clearly added a temporal restriction on the right of Albania or any other European state to join the CSCE process as a participating State or as an observer. Although the

Blue Book does not describe what procedures are required to add additional participating States or observers to the process *after* 25 June 1973, CSCE practice dictates that any change in the status quo requires the consensus of all thirty-five participating States. The Blue Book does not distinguish between the process for obtaining observer status and for obtaining participating State status.

During Secretary of State Baker's opening speech, attention was briefly drawn away when, as he stood at the podium and began to read, more than 30 members of the public stood up on their chairs, took off outer clothing to reveal white sweatshirts with "HIV+" printed on them in large black letters, and silently unfurled a banner that read: "CSCE Breaks Down Walls; USA Puts Up Walls." Their orderly demonstration was in anticipation of an international conference on AIDS scheduled to be held in San Francisco later in the month, from which some potential visitors were expected to be barred because of U.S. immigration regulations prohibiting entry of visitors diagnosed as HIV+. Security officers quickly removed the demonstrators from the plenary hall as Secretary Baker continued reading his speech.

Strong support for free elections, rule of law, and minority rights was a common theme in almost all the opening statements. In addition, many speakers, expressing a broad range of ideas, addressed the larger framework of the CSCE and its future in light of the new political climate prevailing in Europe. Several countries noted positively the contributions of the Council of Europe in the human dimension. A number of countries welcomed Albanian representatives to the meeting, although some suggested that Albania would have to accept the provisions of all previously agreed CSCE documents before it could become a full participating State.

While welcoming improvements which had taken place in Eastern Europe and the Soviet Union, some delegations, including that of the United States, raised human rights problems and humanitarian concerns which still persist in those countries. At the same time, many delegations evidenced considerable uncertainty regarding how implementation issues should be construc-

tively approached in what was agreed to be a markedly different political environment. Under these circumstances, only a few implementation issues were consistently singled out.

Concern over the continued intransigence of the Soviet Government regarding the three Baltic States was voiced by several delegations. In raising this issue, Secretary of State Baker was joined by Irish Foreign Minister Gerard Collins, who spoke on behalf of Ireland as well as the 12 member-states of the European Community; British Foreign Minister Douglas Hurd; Luxembourg Foreign Minister Jacques Poos; Norwegian Foreign Minister Kjell Magne Bondevik; Canadian Foreign Minister Joe Clark; and Dutch Head of Delegation Max van der Stoel. Icelandic Foreign Minister Jon Baldvin Hannibalsson stated the issue most concisely when he remarked: "There can be no solution to this problem that is compatible with the Helsinki-Vienna process, other than full recognition of the Baltic nations' right to independence. . . . Peaceful negotiations, between the Soviet Government and the democratically elected Governments of the Baltic States, is a crucial test of the Soviet Union's commitment to the principles of peaceful reform and fundamental democratic values."

A number of delegations declared their support for the gradual abolition of the death penalty and the adoption of a commitment to that end within the CSCE process. Among those who advanced this position during the opening of the meeting were Danish Foreign Minister Uffe Ellemann-Jensen; Federal Republic of Germany Foreign Minister Hans-Dietrich Genscher; Portuguese Foreign Minister Joao de Deus Pinheiro; Luxembourg Foreign Minister Jacques Poos; Italian Foreign Minister Gianni de Michelis; Maltese Foreign Minister Guido de Marco; Swedish Foreign Minister Sten Andersson; Dutch Head of Delegation Max van der Stoel; and Italian Head of Delegation Walter Gardini. In addition, Soviet Head of Delegation Yuri Reshetov supported proposals put forward by Amnesty International regarding the gradual abolition of the death penalty; in this regard, he spoke of changes in Soviet laws cutting the number of crimes punishable by the death penalty from thirty-four to six (leaving, specifically: high treason, espionage, terrorism, sabotage, pre-meditated murder under aggravating circumstances, or rape of children).

### The Human Dimension Mechanism

As a result of a Western desire to improve the implementation of CSCE provisions in the "human dimension"--which includes the Principles section of Basket I as well as Basket III--a device was created at the Vienna Follow-up Meeting known as the "human dimension mechanism." This mechanism allows any participating State to raise instances of non-compliance with any other state at any time and commits the other state to respond.

Specifically, the Vienna Concluding Document commits each of the participating States:

- (1) to respond to requests for information and to representations from any other participating State on specific cases or broad situations relating to commitments in the human dimension of the CSCE;
- (2) to meet bilaterally with participating States requesting such a meeting to examine these cases or situations;
- (3) to bring, if it deems necessary, these cases and situations to the attention of the other participating States; and
- (4) to provide, if it deems necessary, information on what has transpired in paragraphs (1) and (2) at the three meetings of the CHD as well as CSCE follow-up meetings.

The Paris Meeting of the CHD came right on the heels of the Vienna Follow-up Meeting and, as a consequence, there were limited uses of the mechanism to evaluate at that time. In addition, some countries preferred that their invocations of the mechanism not be made public. This narrowed assessments of both the effectiveness of the mechanism and the substance of its use. Moreover, Romania maintained it was not even bound by the Vienna provisions on the human dimension. Romania's position was widely condemned at both Vienna and Paris as inconsistent with Romania's consensus to the entirety of the Vienna Conclud-

ing Document, including the human dimension provisions, and an act of bad faith towards the CSCE process in general.

A year later, a great deal had changed, as illustrated by the two cases or situations which had led to the greatest number of known uses of the mechanism prior to and during the Paris Meeting. At that time, the most frequently raised case was the arrest of the renowned writer Vaclav Havel in Czechoslovakia last year. At the time of the Copenhagen Meeting, after last November's "Velvet Revolution," Vaclav Havel was President of his country. In Paris, the most frequently raised situation was that of Romania, particularly the practice of "systematization," which was expected to result in the destruction of approximately half of Romania's 13,000 villages. Immediately after the overthrow of the Ceausescu regime in December 1989, the systematization program was abandoned. In January 1990, Romania rescinded its previous position on the human dimension and announced its adherence to all elements of the Vienna Concluding Document. Most of the concerns which led to uses of the mechanism before and during the Paris Meeting have been similarly resolved.

In spite of the tremendous progress in the human dimension evidenced in several countries, it is clear that the human dimension mechanism did not fully keep pace with those events. Nothing is more indicative of this than the record of its use over the last year since the Paris Meeting, and particularly in the six months prior to the Copenhagen Meeting. After the eventful fall of 1989, few countries made representations or requests for information to other countries under the provisions of paragraph 1. As in Paris, in Copenhagen the delegations found themselves with a record which was difficult to assess.

Nevertheless, many delegations asserted the human dimension mechanism has greater potential to be used constructively than ever before. In this vein, the United States voiced the hope that "the mechanism, when it is used, will be used in good faith, with the genuine aim of seeking information and resolving concerns. Incorrect uses of the mechanism--and there have been some, in our opinion--are less likely to occur. In a trans-Atlantic relationship that is less marked by polemics and more closely identified

with cooperation, the mechanism is a vehicle through which we can communicate our concerns over the issues which trouble us."

#### **Congressional Participation**

A congressional delegation, led by Helsinki Commission Co-Chairman Steny H. Hoyer (D-MD), attended the Copenhagen CHD Meeting. Members of the delegation included two Helsinki Commissioners, Representative Frank Wolf (R-VA) and the Senior Advisor to the Secretary of Commerce on CSCE matters, William Fritts, as well as Representative Ben Cardin (D-MD), who closely follows CSCE affairs.

Co-Chairman Hoyer, in his capacity as Vice-Chairman of the U.S. Delegation to the Copenhagen Meeting, addressed a plenary session of the meeting. In his statement Co-Chairman Hoyer concluded that, as the Soviet Union and the states of Central and Eastern Europe move to institutionalize respect for basic human rights and move on to the broader issues of democracy, CSCE can continue to serve as a source of values and, increasingly, as an agent of conflict resolution.

The congressional delegation also held bilateral meetings with the delegations from the Soviet Union, Turkey, Romania, and Yugoslavia; an informal meeting was held with the Albanian delegation. The delegation joined a reception for representatives of the non-governmental organizations attending the Copenhagen Meeting.

#### **NGO Attendance and Activities**

The attendance at the Copenhagen Meeting by representatives of numerous non-governmental organizations (NGOs) representing a variety of issues demonstrated the continuing interest of private individuals in the CSCE, as well as the important role they play in the process. Representatives of more than a dozen U.S.-based NGOs gathered in Copenhagen, along with NGOs from many other participating States. U.S.-based NGOs attending the meeting included the Estonian-American National Council, the American Latvian Organization, the Supreme Committee for the

Liberation of Lithuania, the Lithuanian Information Center, National Conference on Soviet Jewry, Union of Councils for Soviet Jews, the World Congress of Free Ukrainians, the Armenian Assembly of America, Hungarian Human Rights Foundation, National Federation of American Hungarians, the National Council of Churches, Americans for Soviet Muslim Rights and Beyond War.

NGOs took an active interest in the meeting, organizing or participating in meetings, seminars, and press conferences and meeting with representatives of various delegations. Many NGO representatives worked closely with individuals from the Soviet Union and Eastern Europe, including private citizens and elected officials who were present in Copenhagen independent of official delegations.

The U.S. delegation assisted NGOs in gaining access to the conference center when necessary, listening to their views and concerns, briefing them on developments in the meeting, attending events which they organized, and, in some cases, hosting press conferences for them at the conference hall. NGOs also had the opportunity to meet the congressional delegation led by Helsinki Commission Co-Chairman Hoyer.

Individuals from all participating States were able to attend the meeting without difficulties. There was only one known case of a state-created barrier to attendance at the meeting; that was the case of Soviet refusenik Vladimir Tsivkin, who was denied permission to travel by the Soviet Government.

All plenary sessions of the Copenhagen Meeting were open to the public, and NGO representatives as well as other members of the public and press were able to observe the proceedings. Seating was ample in the plenary hall itself. There were few problems reported regarding access, and the Danish Secretariat was helpful and efficient in facilitating public access to the conference center.

NGOs utilized the opportunity to meet with delegations, including the Soviet delegation, to discuss arrangements for the 1991 Moscow Human Dimension Meeting. During the Copen-

hagen Meeting, the Soviet delegation announced the formation of an NGO-liaison committee under the leadership of former Soviet cosmonaut Valentina Tereshkova.

In addition to their activities in connection with the official meeting, many NGOs also participated in the "Parallel Activities" organized by Danish NGOs--a series of human rights-related seminars, workshops, exhibitions, and cultural events which took place in Copenhagen throughout June. The Parallel Activities Steering Committee operated an NGO-Liaison Counter, located at the main entrance of the Bella Center, as a service to NGOs, delegates, visitors, and press.

#### Proposals, Negotiations, and the Concluding Document

From the first days of the Copenhagen Meeting, countries introduced proposals which built on the work that had been done in Paris. In all, forty-three new proposals were introduced during the four weeks of the meeting, covering virtually every aspect of the human dimension. What was, perhaps, most indicative of the changed atmosphere in Copenhagen was not what was introduced, but what was *withdrawn*. Several delegations withdrew proposals which they had introduced during the Paris Meeting: Romania withdrew Paris proposal #23 (on economic rights); the GDR withdrew Paris proposals #10 (on the right to education), #11 (on scientific and technical progress), and #12 (on developing a "political culture of cooperation"; the Czechoslovak delegation withdrew Paris proposals #25 (on bilateral cooperation in the human dimension) and #26 (on medical assistance); and Turkey withdrew Paris proposal #35 (on the regulation of massive population movements). The GDR characterized the proposals it was withdrawing as "propagandistic." Although in previous CSCE meetings some countries allowed certain of their proposals to die quietly from lack of support, at no other time in the Helsinki process had proposals been formally withdrawn.

In the second week of the meeting, at the suggestion of the highly regarded head of the Czechoslovak delegation, Dr. Jiri Hajek, several informal working groups were established to consider the four categories of proposals which were emerging:



1) a group on free elections and the rule of law, which met under a Swiss coordinator; 2) a group on minority rights, which met under an Austrian coordinator; 3) a group on other human rights and humanitarian issues, which met under a Finnish coordinator; and 4) a group on the human dimension mechanism, which met under a Hungarian coordinator.

#### *Free Elections and the Rule of Law*

During the first CHD meeting in Paris, the delegations of the United States and Great Britain tabled a proposal on free elections and political pluralism. At that time, it was considered a bold proposal--some even considered it unrealistic. In the view of the United States, this proposal was designed to lay the groundwork for further development of these ideas during the second and third meetings on the Human Dimension to be held in Copenhagen and Moscow in 1990 and 1991, respectively. No one could have foreseen in Paris how appropriately the proposal would mirror the events which took place during the next extraordinary twelve months--events which made the adoption of the proposal possible as early as the Copenhagen Meeting.

Reflecting the momentous importance of the democratic transitions taking place in the Warsaw Pact countries, President Bush gave top priority to the adoption of the free elections proposal in Copenhagen. In the months leading up to Copenhagen, the United States and Great Britain refined their original Paris proposal and, along with Canada, introduced it again in Copenhagen. By the end of the second week of the meeting, this proposal (CHDC.2) had twenty-one other co-sponsors. As a consequence, work in this area progressed relatively smoothly.

The proposal embodied the key elements of a democratic electoral process, including: free, open and periodic elections; individual and collective rights to establish political parties and organizations; uninhibited access to the media; and a commitment to ensuring a tolerant atmosphere conducive to the free and open conduct of political campaigning.

Although there were a few changes which had to be made to accommodate the national laws of some Western countries,

consensus was not difficult to reach on the core elements of a free electoral process (paragraphs 6 - 8 of the Copenhagen Document). The last paragraph in the free elections section, dealing with the presence of observers at elections taking place within CSCE states, gave the Soviet Union some difficulty initially. But even this, with some modifications, was able to gain consensus. The negotiations in this area reflected the general tone of the Copenhagen meeting: a strong desire to capture the dramatic movement towards democratic societies within the political context of CSCE commitments.

Likewise, work on a rule-of-law section proceeded without major difficulties. Several delegations had introduced proposals on this subject during the Paris Meeting, and considerable support for the concept of rule of law had been voiced during the opening phase of the Copenhagen Meeting. By 8 June, a rule of law proposal (CHDC.16) was introduced "in the name of the twelve participating States Members of the European Community," and with eighteen co-sponsors.

Although the United States generally supported the concept of the rule of law, CHDC.16, as it was introduced, largely repeated commitments regarding civil and political rights already contained in other international documents. The EC-12 argued that incorporating these commitments into the CSCE process would be a step forward, since not all of the commitments had been endorsed by the Eastern countries (although it was conceded that the Warsaw Pact countries were in the process of doing so).

The U.S. delegation argued that this section would be considerably strengthened by adding language which would address the fundamental components of a democratic system, such as a separation of the state from political parties (a "no-establishment" clause). This language was ultimately incorporated into the final document, particularly as reflected in paragraphs 1, 3, 4, 5.1 - 5.4, 5.6, and 5.9. These provisions regarding what constitutes a *system of democracy* in which civil and political rights may be guaranteed go significantly beyond any other international human rights document.

### ***Minority Rights***

The minority rights working group was arguably the most contentious of the informal bodies. A number of delegations wanted to put their own cast on the final language regarding minorities which would appear in the concluding document, and any residual alliance unity which still existed in Copenhagen was almost completely absent in this group.

It was in this area that a new unofficial negotiating group first made its presence known in the Copenhagen Meeting. Here, Austria, Yugoslavia, Czechoslovakia, Hungary, and Italy coordinated their efforts in what became known as the "Pentagonale Initiative." Coordinated prior to the opening of the Copenhagen Meeting, their proposal (CHDC.5) built extensively on existing accepted language on minorities in CSCE and other international documents, and set out twenty principles to strengthen minority rights observance in the CSCE. This initiative, drawing together neutral/non-aligned countries with members of NATO and the Warsaw Pact, was designed to reflect the new political atmosphere in Europe and the ability of participating States to work together in areas of common interest regardless of "bloc" status.

The working group considered eight proposals in all; of these, three were considered in a small sub-group headed by Canada. Those three proposals represented attempts to operationalize the condemnations of intolerance heard throughout the opening statements of the first week of the meeting.

One of the major dilemmas which delegates confronted in this group was how to curb intolerance while preserving the integrity of the principle of freedom of expression to which the Concluding Document would ultimately refer. History had shown that forty years or more of repressing free speech in some parts of Europe had not made intolerance disappear. Thus, the United States argued that the people who were to be protected by laws limiting the freedom of expression could very well turn out to be the unwitting victims of those laws.

Another particularly contentious issue was the definition of a minority itself. Delegations were split over whether they should

be dealing only with the rights of national minorities, or with those of religious, racial, linguistic and other minorities as well. In the end, the group used the CSCE term "national minorities"; some reserved the right to return to the question of definition at subsequent meetings.

By far the greatest disagreement in the working group centered around the extent to which states should take an active role in protecting and promoting minority identities, rather than refraining from blocking or inhibiting minorities' efforts to protect and promote themselves. Issues of minority language education and the shape of minority participation in public affairs were hotly debated themes, and at times delegations' positions seemed too unreconcilable to achieve any compromise text. Yet thanks in large part to the dogged determination of the Austrian coordinator, these and other divisive issues were ironed out, fine-tuned, and ultimately included in the concluding document. While not as far-reaching as some delegations and NGOs had hoped, the minority rights language in the Copenhagen Document represents a forward step in the CSCE process and minorities protections generally.

The minority rights text of the Copenhagen Document consists of ten paragraphs, numbered 30 - 40.7. The provisions cover a broad scope of issues, ranging from the rights of minorities to contacts with persons belonging to their minority inside as well as across frontiers, to the right to establish and maintain organizations in their country and to participate in international NGOs. Paragraph 40 contains the language of greatest symbolism, embracing specific references to anti-semitism and discrimination against Roma (gypsies). It was felt that a direct reference to anti-semitism was particularly important because, prior to Copenhagen, the Soviet Union had refused in all international fora to accept a reference to this problem of clear historical and contemporary importance. Participating States also felt a special collective responsibility to acknowledge the plight of Roma, a people without a majority in any state to act on their behalf.

#### ***Other Human Rights and Humanitarian Issues***

A third working group was established to review the broad and often unwieldy group of "other" proposals that failed to fit neatly into one of the three other categories. Here, proposals ranging from the rights of children to the abolition of the death penalty to democratic-institution building were considered. Some of these proposals, such as a Canadian proposal on the right to leave and return and a Yugoslav proposal on the rights of migrant workers, represented ambitious attempts to expand on subjects already touched upon in CSCE documents. Others, such as a Dutch proposal on states of emergency, broached new subjects that had not been raised in previous CSCE meetings.

This group was significantly handicapped by the inordinate number of proposals which the delegates were asked to negotiate. In the end, there was simply more on the table than could be fairly and thoroughly reviewed. The Finnish coordinator met the challenge by salvaging in some innocuous form the basic theme of virtually every proposal. Although the end product contains few hard and fast commitments, it sets the stage for a more comprehensive discussion of those subjects which may continue to be of interest at the Moscow Meeting.

#### ***The Human Dimension Mechanism***

This working group was perhaps the most surprising of the four in that it accomplished the least relative to the grand ambitions held by a number of countries in this area. It was in this group that proposals aimed at improving the working of the so-called human dimension mechanism were considered, including several that would have involved considerable "institutionalization" of the CSCE.

Virtually the only proposal that survived this group was one initially proposed by the Italians during the Paris Meeting and revised in Copenhagen. This proposal, reflected in paragraphs 42 - 42.3 of the Copenhagen Document, is directed at increasing the efficiency of the human dimension mechanism by setting out greater procedural clarity for its use.

The Swiss, the Canadians, the Danes, and the Dutch also all spearheaded strong efforts to elaborate further on the mechanism. Their efforts, however, did not come to fruition. In spite of the strong interest expressed by many delegations in strengthening the human dimension mechanism, there was equally strong resistance from several quarters for several reasons. Some countries, like Greece, stated they were simply unprepared to accept any new commitments at Copenhagen which they considered forms of "institutionalization." Although the Vienna Concluding Document clearly gave all three human dimension meetings a mandate to adopt such procedures, many countries wanted to leave these decisions to the fall ministerial summit.

In addition, there was a failure to find common ground even among those countries introducing proposals in this area. A number of the proposals seemed, on their surface, to be quite similar; for example, one group dealt with "observers," "rapporteurs," and "experts"--persons who would come into a country to examine an issue. Another group dealt with establishing committees. Yet in spite of the superficial similarities, proposing countries could not find shared elements to incorporate into a final document.

Finally, some countries were so attached to their own national proposals that they were only willing to support publicly other compromise proposals at the eleventh hour when, effectively, it was too late to gain the support of other, more recalcitrant delegations.

### Conclusions

The Copenhagen Meeting continued the momentum established at the Bonn Economic Conference--a momentum propelled by a sense of urgency to provide guidelines for newly emerging democracies seeking to establish rule-of-law states and free market economies. The Soviet Union and the East European states were at least ready to adopt a common body of truly democratic principles even if they were not yet implementing them fully in practice. This alone was a major achievement.

The dynamics of the meeting reflected the post-Cold-War era in which the CSCE community now finds itself. Perhaps the most striking feature of the meeting was the absence of the traditional East-West division--foreshadowed at least as early as 1989 in the London Information Forum--although new forms of effective cooperation had not yet emerged to replace the old ways. The meeting was also notable in that there seemed to be agreement from the beginning that a document was needed. In previous CSCE meetings, the United States generally considered the adoption of new documents of secondary importance to efforts directed at improved implementation of existing CSCE commitments. In Copenhagen, delegations recognized from the outset that CSCE was ready to adopt commitments which, for the first time, would be based on a common philosophical view of government and would, if implemented, provide their citizens with a voice in how they should be governed.

As a consequence, the Copenhagen Meeting was characterized by fast-track negotiations rather than the traditional concentration on implementation review. While implementation review was not altogether neglected, neither was it the primary focus for Western delegations. It was generally assumed that implementation had improved to the point where less review was needed.

The negotiations themselves offered a fascinating study in the new dynamics of CSCE. With the disappearance of clear distinctions between the governments of East and West, West-West differences in national laws presented some of the most difficult challenges to consensual agreement. Ireland, for example, insisted on heavily qualifying the free elections section with a statement reflecting its concern about terrorist activities in Northern Ireland. The Swiss had to be particularly sensitive to the unique election procedures (e.g., voting by a show of swords) in some of its cantons. States which still practice the death penalty, including the United States, were at odds with the growing majority of CSCE countries which no longer permit this as a legal form of punishment.

Although none of these differences resulted in insurmountable obstacles at the Copenhagen Meeting, they serve to illustrate the

new phase CSCE has entered. The opportunity now exists to explore higher human rights standards for CSCE as a whole, which will increasingly test the limits which are acceptable in Western, as well as Eastern, CSCE states. The strengths and the weaknesses of the Copenhagen Document shed light on what may--and may not--be achievable in the near future in the CSCE.

On the positive side, the Copenhagen Document enunciates standards for democracy that are absent from any other CSCE document and, indeed, from other human rights instruments. The commitments on rule of law, free and fair elections, and pluralism form a remarkable declaration of the quintessential elements necessary for the guarantee of individual civil and political rights. They demonstrate that the CSCE states are prepared to make significant movement forward in accepting broad principles governing not only their relations with each other and with their own citizens, but governing the fundamental structure of the state itself. As such, this language may provide the nucleus for future implementation reviews at the Moscow Meeting of the Conference on the Human Dimension and beyond.

Although the Copenhagen Document's shortcomings do not seriously undermine its overall achievements, they do point to potentially serious problems which CSCE may face in the future. First, the document contains a significant amount of repetition of commitments which have already been elaborated in other human rights instruments. The motivation for proposing such language seems to stem from a desire to see greater specificity in CSCE; but previously enunciated commitments are not likely to be more effective simply because they are now directly included in a CSCE document, rather than included by reference. Future meetings will indicate whether the repetition of these previously enunciated commitments within the CSCE does, in fact, make it easier to seek their implementation.

The Copenhagen Document is also devalued by language which contains little in the way of substantive, clear obligations. This is particularly true of the section dealing with "other human rights and fundamental freedoms." In this area, countries proposing commitments unable to gain consensus demonstrated their



willingness to settle for a generic reference to the subject, without holding out for real teeth. Likewise, countries opposed to certain proposals evidenced their willingness to accept a minimized reference to the subject for the sake of preserving the new "atmosphere" of the meeting. If continued, this practice could lead to a proliferation of language devoid of real obligations. Alternatively, to negotiate thoroughly and effectively the diverse range of subjects covered in this area is likely to take longer than the amount of time allotted to scheduled intercessional meetings and, in the end, may force countries to recognize that consensus on substantive obligations regarding many of these subjects simply does not exist. In this respect, Moscow and other meetings may provide a real test of countries' willingness to walk away with nothing rather than accept a watered-down version of a proposal.

Finally, the Copenhagen Document bears the scars of the emerging struggle between the legal advisors and the diplomats. CSCE is having an identity crisis: on the one hand, there is the long-standing and time-tested practice of seeking commitment to broadly based principles which are politically binding. On the other hand, there is a noticeable trend in some quarters to treat the documents being negotiated as though they are draft treaties--the idea being, it seems, that what is good will be even better if it is legally binding. At times, these two schools of thought clash, as when the former leans toward a concise statement of principle that can be applied to many circumstances, and the latter leans towards enunciating detailed standards, specifying every possible eventuality. As one delegate in Copenhagen quipped, "The fight used to be between East and West; now it's between all of us [delegates] and all of our lawyers." Some of the questions raised in this debate may be answered in the forth coming summit; others may have to wait until there is greater clarity in post-Cold-War European and North American relations.



## **REPORT ON THE PALMA MEETING ON THE MEDITERRANEAN**

### **Summary**

As mandated by the 1989 Vienna Concluding Document, the third CSCE meeting on the Mediterranean was held in Palma de Mallorca, Spain, from September 24 to October 19, 1990. Delegations from the 35 (subsequently 34) CSCE participating States focused on intensifying cooperation among the countries of the Mediterranean region with particular emphasis on sustaining and improving the area's environment and ecosystems, as well as on the examination of social, economic and cultural issues of the region. Delegations emphasized the need to close the ever-widening economic and cultural gaps between the countries along the Mediterranean's southern and eastern shores and the countries of Europe, and recognized the essential role of the environment in all aspects of Mediterranean life.

In addition to the CSCE countries from Europe and North America, eight Mediterranean littoral countries--the so-called "Non-Participating Mediterranean States" (NPMS)--attended: Algeria, Egypt, Israel, Lebanon, Libya, Morocco, Syria, and Tunisia. According to the CSCE rules of procedure, these countries may attend and contribute to meetings on the Mediterranean but may not take part in the negotiation or adoption of documents.

In addition, Albania attended the meeting as an observer. On October 3, the reunification of Germany was officially acknowledged; the German Democratic Republic was no longer recognized as a participating State, and the unified delegation of Germany took the seat formerly held by the Federal Republic of Germany. As of October 3, therefore, the membership of the CSCE was reduced from 35 to 34.

Although not included on the agenda, a proposal Italy and Spain at the opening plenary session to establish a Conference on Security and Cooperation in the Mediterranean--to be modeled after the CSCE but with membership drawn from Mauritania in

the West to Iran in the East together with some of the participating States of the CSCE. While this proposal commanded substantial interest and attracted support from some of the delegations, it was never formally tabled for consideration in the final report of the meeting.

Reflecting the theme of enhanced cooperation which dominated the meeting's deliberations, a final report was adopted which emphasized that solutions to the region's environmental, social, cultural and economic problems raised at the meeting could only be achieved through cooperation on all levels. The report also recommended that environmental policy be guided by the "polluter pays principle" and the "precautionary principle." Far-reaching political reforms coupled with human rights guarantees for all people of the region were also called for in the report.

#### **Background to and Organization of the Meeting**

The origins for the Palma Meeting on the Mediterranean can be found in the 1975 Helsinki Final Act, which commits the participating States to work cooperatively not only among themselves but also with the Non-Participating Mediterranean States to address the political, cultural, environmental, historical, economic, and geographical issues of the region. Working to carry out that mandate, a meeting to foster scientific, economic and environmental cooperation in Mediterranean region was held in 1979 in Valletta, Malta.

At the Madrid Follow-up Meeting (1980-83), final deliberations were obstructed by an insistent Maltese demand to schedule a meeting on the Mediterranean. Fearing that such a meeting would be dominated by crises in the Middle East and derail other work of the CSCE, a carefully tailored compromise was reached. Accordingly, it was agreed that the work of the 1979 Valletta meeting would be continued in a second meeting on the Mediterranean, held in Venice in 1984. A third meeting on the Mediterranean, scheduled for Palma de Mallorca in 1990, was mandated by the Vienna Follow-up Meeting (1986-89).

Annex VII of the Vienna Concluding Document contains the agenda and modalities for the Palma meeting, as follows:

1. Opening plenary statements by the Participating States, international organizations, and Non-Participating Mediterranean States;

2. An exchange of views on specific aspects of cooperation, in such endeavors as accelerated social and economic development in the region, development of solar and wind energy, the harmonization of statistics, encouragement of contacts and the preservation of historic monuments, as well as the examination of the most productive means to protect the ecosystems of the region in the plenary and in the two subsidiary working body sessions;

3. The submission and consideration of proposals generated during the plenary and subsidiary working body sessions;

4. The formulation of conclusions and recommendations for adoption in a final report;

5. Closing plenary statements.

#### **U.S. Delegation to the Meeting**

John R. Davis, Jr., a former U.S. Ambassador to Poland, led the U.S. delegation to the Palma meeting. David M. Evans, the Senior Advisor for Soviet and East European Affairs to the Commission on Security and Cooperation in Europe, served as deputy head of the delegation, which also included other State Department officials and members of the Commission staff. Representatives from the Environmental Protection Agency (EPA) and the National Oceanic and Atmospheric Administration of the Department of Commerce contributed technical expertise to the delegation. Continuing the practice of including public members in the U.S. delegation, Tom Freestone, a supervisor for Arizona's

Maricopa County and Massachusetts Institute of Technology (MIT) Professor Peter Haas also served as members of the delegation.

#### **NPMS Participation**

The 35 (subsequently 34) CSCE participating States were joined by eight other Mediterranean nations: Algeria, Tunisia, Morocco, Libya, Egypt, Lebanon, Israel, and Syria, the so-called "Non-Participating Mediterranean States" (NPMS). With the exception of Libya, all the NPMS made statements at the opening plenary session and contributed to the working bodies as well. While the NPMS are not permitted to take part in decision-making (i.e., they do not have the right to grant or deny consensus), they were encouraged to participate fully in the meeting's discussions.

#### **Opening of the Meeting and Plenary Sessions**

Signifying the importance Spain placed on the meeting, King Juan Carlos welcomed the delegations to the opening plenary session, and noted that the interdependence among the community of Mediterranean nations, which has characterized the region throughout history, forms a solid basis for cooperatively reaching solutions to the area's problems.

As anticipated, early in the opening plenary session Spain sought and received consensus on observer status for Albania, whose delegate was seated in the rear of the hall and did not address the meeting. Albania had first received observer status at the June 1990 Copenhagen Meeting of the Conference on the Human Dimension; this, therefore, was the second time that Albania had attended a CSCE meeting.

In his presentation for the United States at the opening plenary session, Ambassador Davis stressed the worldwide consequences of environmentally sensitive activity, emphasized the unbreakable connection between democratic institutions and the global establishment, urged the protection of robust ecosystems, and referred to the successful environmental efforts the United States has undertaken with its neighbors, Mexico and Canada.

Citing the International Boundary and Water Commission created by the United States and Mexico and the Boundary Waters Treaty between the United States and Canada, Ambassador Davis suggested these North American joint endeavors could usefully serve as models for Mediterranean countries. The Canadian representative also made reference to the effectiveness of the U.S.-Canadian Great Lakes Water Quality Agreement in improving the quality and protecting the ecosystems of the Great Lakes and the Boundary Water Treaty which has served for nearly one hundred years to protect transboundary waters.

The opening plenary statement by the NPMS were frank and, like those given by the participating States, dwelled in equal measure on security and environmental issues. Hope for peace in the region was expressed by all; Lebanon, in particular, touched on almost nothing else. Tunisia condemned Iraq's invasion of Kuwait in specific terms while Israel and Algeria referred to the invasion obliquely.

Both Algeria and Morocco decried their status as non-participants and asked for expanded cooperation with the CSCE; Algeria reiterated its view that NPMS should be full participants in CSCE Meetings on the Mediterranean. Tunisia expressed a desire to see Palestine present to express its views. On environmental issues, delegations underscored their concern over problems such as water shortages and sea pollution. In this context, Israel offered its cooperation to everyone in the region.

Representatives of international organizations, including the United Nations Economic Commission for Europe (ECE), UNESCO, the UN Environment Program, and the EC Commission, also made contributions at the conclusion of the opening plenary proceedings.

#### **Subsidiary Working Body Sessions**

Designed to provide the opportunity for detailed consideration and presentation of technical expertise on specific topics of the agenda, the working body sessions were divided into two segments: one was assigned to explore social, economic and cultural matters,

the other was assigned to the environment and its more technical aspects.

Expanding on the pressing need to improve economic conditions in the countries on the Mediterranean's southern and eastern rim, delegations made presentations, including a number by the EC, which urged increased multilateral and bilateral aid, regional integration, application of the peace dividend to aid projects, and enhanced coordination to maximize the productivity of these efforts. Italy called for increased European investment in North Africa as a means of stemming the tide of immigrants who are flooding the European labor markets, recommended the establishment of a European Bank, and called for the donation of one percent of the gross national product of European countries to North Africa.

Delegations also discussed the means by which trade could be increased, social conditions improved, and statistical methods harmonized. The participants also endorsed the idea of holding meetings, round tables, study visits, and seminars where views and expertise could be exchanged and concrete programs developed.

Several presentations devoted to the preservation of historic and cultural treasures were made by those countries with significant classical archeological sites: Greece, Turkey, Spain, France, Italy, and Cyprus. They were joined by the USSR, represented by a professor of archeology from Georgia, and Poland. All speakers emphasized that the protection, conservation and restoration of the region's cultural heritage were integral parts of balanced development of Mediterranean countries. In a heated exchange between the Turkish and Greek delegations, each accused the other of disrespectful treatment, including the illicit sale, of the other's artistic, historic and religious treasures located in their respective areas of Cyprus.

Among the numerous presentations which advocated the preservation of cultural and historic monuments, the remarks made by Russian Orthodox Archbishop Clement on behalf of the delegation of the USSR were unique. The archbishop noted the importance of maintaining spiritual ecology through the preservation of



historic sites, particularly the Russian Orthodox monasteries on Mt. Ethos.

The discussion of solar and wind energy had particular relevance for the southern European countries, where the potential for its productive application is the greatest. Spain and France described their renewable energy programs, including their investment in photovoltaic systems. Mark Joyce, a member of the U.S. delegation from the EPA, described the success the United States has had with solar and wind energy projects, noting that wind energy produced in California was equivalent to the energy generated by two nuclear power plants.

In other sessions, water--its supply and its quality--was the dominate subject. The special problems of shrinking and inadequate water resources were described by representatives from countries which are islands or include islands in their national territories. Several delegations called for increased research, particularly collective research on fresh water policy, as well as for increased exchange and dissemination of data and findings within the region on current activities by international organizations. Italy described its application of a hydrological approach to integrate quantity and quality considerations within a broader framework including water-soil interaction. Yugoslavia also outlined an integrated environmental policy utilizing impact assessments. Tunisia called for control of accidental pollution from radioactive wastes, particularly those generated by (unspecified) naval activities, and for the prohibition of the transfer of toxic and hazardous wastes through the Mediterranean. Speaking as a member of the U.S. delegation, MIT Professor Peter Haas urged government coordination of standard setting for controlled substances and establishment of reception facilities for oily and hazardous wastes.

In discussions on efforts to control and prevent the pollution of international waterways from flowing into the Mediterranean and on pollution by ships, many countries recounted recent policy shifts which had been undertaken in order to ensure compliance with the Barcelona Convention for the Protection of the Mediterranean Sea Against Pollution and to improve monitoring of

marine water quality as well as for fresh water management. Ratification of the International Convention for the Prevention of Pollution from Ships, known as MARPOL, was urged by several delegations. Scandinavian countries spoke of their ongoing efforts to protect the Baltic, the North Sea, and the Atlantic Ocean.

During consideration of the recycling of waste water and other technologies designed to expand available water resources, U.S. delegation member Tom Freestone described the successful recycling of waste water and sludge for agricultural use in Arizona, as well as that state's effective waste water purification projects which include the reinjection of waste water into aquifers. An expert from the German Ministry of the Environment advanced the "polluter pays principle" under which the full costs of pollution would be borne by polluters.

A Soviet presentation on the similarity of the Black Sea and the Mediterranean ecosystems was made by a professor from Georgia's Academy of Sciences. He expressed support for full implementation of existing relevant conventions and documents, including MARPOL, the CSCE Sofia Document of the Meeting on the Protection of the Environment, the ECE guidelines on transboundary waters, the Barcelona Convention, and the Mediterranean Action Program. A professor from the Ukrainian Academy of Sciences argued that the Black Sea is a subregion of the Mediterranean and noted that the Ukraine's interest in environmental protection is growing in tandem with Ukrainian economic and political independence.

When the working bodies turned to terrestrial issues, presentations focused on programs which have been devised to combat desertification through forest conservation and reforestation, soil erosion control and antigrazing practices. In this context, Tom Freestone described an Arizona reforestation program through which 25 species of desert-adapted trees have been planted and maintained throughout the state. France, Spain, Greece, and Yugoslavia, countries plagued by the destructive phenomenon of forest fires, offered recommendations based on their experiences with prevention, identification of areas for international coopera-

tion, risk evaluation, public education, and implementation of forest management practices to reduce the occurrence of fires.

The portion of the working bodies devoted to atmospheric problems focused attention on urban air quality, the effects of air pollution on biological ecosystems and historic monuments, the sources of air pollution, and the Mediterranean share in long-range air pollution. During this session, calls were made for the collection and dissemination of pertinent data, especially with regard to the effects of acid rain, more effective urban planning, including planning for transportation, new technologies, especially motor vehicle technology and renewable sources of energy, and finally, the need to prevent pollution. A representative of Tunisia made a presentation on the detrimental effects of fossil fuel combustion on air quality in its larger cities. He also expressed concern about hazards presented by global warming and climate change to agriculture.

Other sessions of the working bodies covered a wide range of environmental issues including the adverse impact of urban development on the environment in Malta and Spain, coastal zone management programs in Turkey, conservation through land acquisition and sand dune reconstruction in France, the impact of bioclimatic changes and urbanization on the ecosystem in Tunisia, the need for the institution of a cooperative international program to combat air pollution, radon pollution, and the integrated approach to pollution control developed in the United Kingdom.

The environmental consequences of tourism were also considered by the working bodies. Speakers described the strains placed on the environment by tourism including the degradation of air and water quality and their adverse impact on natural areas. Improved coastal zone planning and reduction of the concentration of tourists in certain areas were suggested as possible means to mitigate the impact of tourism and the stress which development imposes on the environment.

Of final note was the recognition of the unification of the two Germanies at the October 2 working body session. In his final CSCE statement, the GDR head of delegation stated that a unified

Germany would serve peace and unity in Europe and that the fate of Germany would be intertwined in the fate of Europe. At the next session, on October 3, 1990, a single, unified delegation occupied the former seat of the Federal Republic of Germany with the new nameplate of Germany.

#### **NGO Attendance and Activities**

Led by the international environmental protection organization, Greenpeace, an Alternative Conference on the Mediterranean was held simultaneously with the Palma Meeting. Advocating increased dialogue and more concrete action to solve the region's problems, alternative conference representatives attended the opening plenary session, held several press conferences, and distributed materials advancing their respective causes. Positions advocated by the Alternative Conference included demilitarization of the Mediterranean zone, demolition of nuclear bases and the adoption of preventive measures to reverse the environmental degradation of the Mediterranean region. Greenpeace in particular, with its ship, the *Sirius*, moored in the Palma harbor, maintained a high profile.

At the end of the opening plenary, Cyprus proposed that non-governmental organizations be given access to the sessions of the subsidiary working bodies. Although Bulgaria suggested that this could be permitted on the basis of the precedent of the CSCE London Information Forum, no consensus was reached on the Cypriot proposal.

#### **Proposals**

Although a total of five proposals were formally tabled in Palma, a proposal introduced by Italy on behalf of the EC constituted a significant portion of what was considered for adoption in the final report. Based on four main principles, the EC proposal was designed to increase cooperation among coastal countries and promote the implementation of the Mediterranean Action Program (MAP) and the Barcelona Convention; to increase financial support for investment efforts by Mediterranean countries and the EC; and to create mechanisms to facilitate the use by the

NPMS of EC environmental experience and allow the NPMS to participate in EC environmental projects. On net, this proposal incorporated the meeting's agenda topics and reflected the substance of its deliberations.

In addition to the EC proposal, other recommendations were submitted for inclusion in the report. These included proposals such as the one offered by Yugoslavia for forest fire prevention, control and limitation, and another in which Yugoslavia, Canada and Sweden urged the adoption of sustainable development policies consistent with environmental protection. Canada also tabled a "polluter pays principle" proposal. The Soviet Union attempted to link Black Sea concerns to the Mediterranean, but without success. The Soviet Union tabled two additional proposals: one noting the "special role of small and medium-size business enterprises" and a second recommending the application of resources formerly allocated for defense to the acceleration of social and economic development.

Indicative of the growing importance to democracies of the availability of government-held information to its citizens, and building on the Sofia Document tenet that environmentalists have the right to have access to government information regarding environmental concerns, the United States proposed that toxic emissions reporting programs be established by CSCE states.

The Foreign Minister of Spain, at the opening of the meeting, also introduced the concept of a Conference on Security and Cooperation in the Mediterranean (CSCM), an organization to be modeled after the CSCE. Initially proposed almost 20 years ago by former Italian Prime Minister Aldo Moro, the CSCM concept gained impetus from the Iraqi invasion of Kuwait and the ensuing Gulf crisis as well as the widening economic disparity between the countries on the Mediterranean's southern and eastern shores and the European nations to the north. Prior to the Palma meeting, regional security, including the CSCM concept, had been taken up at three other meetings: at the annual meeting of the foreign ministers of the Non-Aligned Mediterranean countries and then at meetings in Rome in March 1990 and in Tunis in June 1990 of Spain, France, Italy, and Portugal together with the four

Maghreb states (Algeria, Libya, Morocco, and Tunisia), convened to discuss security, cooperation, development, environment, and social issues. The Foreign Ministers of Spain, France, Italy, and Portugal met their Maghreb counterparts again in Rome in October 1990 for further consideration of these issues. Additionally, a paper on the CSCM concept was circulated by Spain and Italy prior to the Palma meeting.

Italian Foreign Minister de Michelis also outlined in greater detail the CSCM proposal in his opening remarks, describing an organization which would address security issues (including the stability of frontiers and arms control), regional economic cooperation, and the human dimension (including sharing of information and understanding between cultures and religions). CSCM states would be drawn from a region stretching from Mauritania in the West to Iran in the East, including the Black Sea area, and would also include the USSR, the United States, the European Community, and Palestinian representatives.

Initial response to the CSCM proposal was mixed, but its strongest support came from those countries bordering on the Mediterranean: Spain, Italy, Yugoslavia, Turkey, Malta, Cyprus, Greece, Portugal, Algeria, Egypt, Morocco, and Tunisia, joined by the USSR, Romania, and Bulgaria. France, originally associated with the CSCM initiative, did not specifically back the proposal; instead, France called for an "opening toward the Mediterranean." Norway, Finland, the GDR, the FRG, Sweden, and Hungary suggested in their opening plenary statements that the concept deserved further consideration. Several other countries declined to comment on the proposal. The United States, however, actively opposed consideration of a CSCM at the Palma meeting, basing its position on the limitations imposed on the agenda of the meeting as set forth by the Vienna Concluding Document and the belief that a debate on such a conference would side-track other previously scheduled work.

#### Negotiating a Concluding Document

The Palma meeting brought into clear focus the increasingly dominant role assumed by the European Community at CSCE

meetings. Establishing a pattern that was to prevail throughout the meeting, the EC from the very beginning asserted a claim to leadership through the Italian delegation, which made statements and launched proposals on behalf of the EC.

Although the comprehensive EC proposal provided the basis for the final document, the United States opposed several of its provisions. Particularly unacceptable were those recommendations asking for increased financing of technical assistance and investment efforts aimed at bolstering economic development in the less affluent Mediterranean countries. The United States objected to increased financial assistance to Mediterranean countries because many countries of the region are already direct recipients of U.S. foreign aid and because only the U.S. Congress is empowered to make U.S. foreign aid commitments. The Soviet Union, Bulgaria, and Poland joined the United States in objecting to these provisions. Finally, the United States also faulted the EC proposal because, unlike the 1989 Bonn Document, no means for the implementation of projects were contained in the EC proposal.

The United States also resisted the numerous references in the original EC draft to security in the Mediterranean, noting that security issues were not included in the mandate for the Palma meeting and that the real subject matter of the meeting was the environment. The United States opposed the direct linkage of security with the Non-participating Mediterranean States, and succeeded in obtaining language which placed European security concerns in the "broader context of world security" and "security in the Mediterranean area as a whole."

Representatives from the Swiss, Swedish, and Finnish delegations were selected as the coordinators for the drafting of the final document. Their skillful and tireless efforts, made under the pressure of the meeting's firm deadline, were applauded by all.

The report ultimately adopted stresses reliance on cooperation, including greater integration of practices and policy; more thorough coordination of national planning; and wider exchange of information between CSCE participating States and their Mediterranean neighbors in order to ensure the vitality of the region and

its people. To achieve these goals, the participating States also endorsed the principle of sustainable development, citing this concept as the foundation upon which any future success must rest. Recognition was given to the indivisibility of social, economic, and environmental concerns as well as to the joint responsibility borne by all sectors of society--governments, the public and industry--for making decisions on these issues.

Reflecting the discussions of the subsidiary working bodies, the report also acknowledges that solutions to the problems of the Mediterranean basin lie in the promotion of far-reaching political reforms and in the guarantee of human rights for all people in the region. The report also closely links improvement of the region's economic conditions with the establishment of market mechanisms, regional integration, private investment, joint ventures, increased dialogue about economic policy among affected parties, the development of a transport infrastructure, and participation by all concerned states in fora designed to promote economic cooperation.

The report adopted by the Palma meeting reflects the contribution made by the U.S. delegation in focusing the meeting's discussions and conclusions on environmental issues. Based on the concept of a citizen's right to know and building on the Sofia Document's recognition of the right of environmentalists to obtain information, the United States' proposal that toxic emissions reporting programs be established was incorporated into the report.

#### **Closure of the of Meeting**

Following the adoption of the final report, statements given by more than half of the delegations during the closing plenary session emphasized the spirit of cooperation which characterized the meeting and allowed consensus to be reached. However, Malta expressed its disappointment in the document, which, according to the Maltese delegate, in its "truncated, perfunctory" references to security in the region, failed to address fully this most important issue. In addition, the president of the Spanish Chapter of Greenpeace characterized the Palma meeting as a



failure saying that, "none of the proposals . . . will result in any substantial improvement in the Mediterranean situation."

Among the NPMS, Tunisia was joined by Egypt and Algeria in taking the floor to make final presentations. All spoke positively about the meeting endorsing its accomplishments. Even though the Tunisian representative lamented its non-participating status, he offered praise for the achievements of the meeting especially in the areas of security and cooperation in the Mediterranean.

As at the opening plenary session, Italy used its turn to speak first on behalf of Italy, then the EC Presidency, while also taking time for a statement by the EC Commission. Altogether, Italy accounted for one third of the time available to all delegates at the closing plenary session. A strident discussion among Cyprus, Turkey, and Greece brought a note of discord to the otherwise harmonious final session.

#### Conclusions

With the cold war consigned to history, the CSCE is free to turn a greater portion of its attention to topics other than security such as economic, social, cultural and environmental issues, which so profoundly effect the quality of life. The Palma Meeting was dedicated to deliberation of these vital issues. While distracted to some extent by conflict in the eastern region of the Mediterranean and in the Persian Gulf, the delegates from the participating States and the NPMS were able to consider in depth these questions as they effect not only the Mediterranean Basin but also, inevitably, other regions. It was agreed that positive change in this area would flow only from informed cooperation. The final report contains guidelines which, if followed, will facilitate the achievement of solutions to the region's problems and help ensure the implementation of sound environmental policy based on democratic institutions, economic growth, and social justice.

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**REPORT ON  
PEACEFUL SETTLEMENTS OF DISPUTES  
IN THE CSCE PROCESS**

"Procedures for peaceful settlements of disputes pose basic questions about the future development of the CSCE and for the role of the Council of Ministers. If satisfactory answers cannot be found to these questions the future of the CSCE is bleak."

-- *Institution-Building in the Conference on Security and Cooperation in Europe, paper by James E. Goodby, December 1990*

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**Summary**

From January 15 to February 8, 1991, the participating States of the CSCE met in Valletta, Malta, for an inter-sessional meeting on the peaceful settlement of disputes (PSD), one of the 10 Principles Guiding Relations between Participating States enunciated in the 1975 Helsinki Final Act. Although it was the third CSCE inter-sessional meeting on this subject, the previous meetings (Montreux, 1978; Athens, 1984) were overshadowed by the polarization of East-West relations and reached little substantive agreement.

The meeting opened on January 15 as the United Nations deadline for Iraqi withdrawal from occupied Kuwait expired. Just hours before the meeting began, Soviet forces attacked and killed civilians in occupied Lithuania. Both events colored subsequent discussions in Valletta.

At the close of the meeting, a document was adopted setting forth tentative provisions for a CSCE mechanism for the peaceful settlement of disputes. However, delegations could not reach agreement designating an institution to oversee the implementation of the mechanism and, consequently, it remained inoperative.

On June 20, 1991, at the Berlin meeting of the CSCE Council of Foreign Ministers, a decision was reached to place the technical aspects of the Valletta mechanism under the auspices of the Director of the Vienna Conflict Prevention Center (CPC). It is expected that a process of nominating persons on whose expertise the participating States may draw in the event of an unreconciled dispute will be completed later in the year (1991), making the mechanism operational. Nevertheless, use of the Valletta mechanism is significantly limited by an "exceptions" clause, inserted at the end of the Valletta negotiations.

#### **Background on Peaceful Settlements of Disputes in the CSCE Context**

##### ***Generally***

During the original Helsinki Consultations (1972 - 1975), Switzerland championed an elaborate proposal on the "peaceful settlements of disputes" (*hereinafter*, PSD), based on a concept developed by Rudolf L. Bindschedler. The idea did not garner much interest or support, enabling the Soviet Union to quash it with little resistance. In the end, Switzerland was forced to settle for a limited reference to PSD in Basket I of the Helsinki Final Act.

The Helsinki Final Act stipulates that all Principles in the decalogue are of primary significance; each must be applied equally and unreservedly; and each must be interpreted taking into account the others. Thus, the duty to settle disputes peacefully, Principle V, is inextricably intertwined with the other Principles, such as the duty to refrain from the threat or use of force (Principle II), the duty to respect human rights and fundamental freedoms (Principle VII), and the duty to respect the equal rights of peoples and their right to self-determination (Principle VIII). In addition, the CSCE commitment to settle disputes peacefully must be read in conjunction with the provisions of the United Nations Charter, which is incorporated by reference in the Helsinki Final Act.

##### ***The Montreux Meeting***

Although the Final Act language fell far short of the ambitious proposal originally tabled by the Swiss, it ensured a place

for PSD in future CSCE meetings, and each subsequent Follow-up Meeting has taken up the issue. While the first main Follow-up Meeting, held in Belgrade from 1977 to 1978, did not produce any new substantive commitments, the participating States were able to schedule several inter-sessional meetings, including one on PSD in Montreux. According to the Belgrade Concluding Document, the purpose of the Montreux meeting was "to pursue the examination and elaboration of a generally acceptable method for peaceful settlement of disputes aimed at complementing already existing methods."

Discussions at Montreux (October 31 to December 11, 1978) focused on three proposals: Swiss, Eastern, and Western. The Swiss working paper included both binding and nonbinding elements for peacefully settling disputes including negotiation, inquiry, mediation, conciliation, and arbitration. The Soviet delegation presented mandatory consultations and negotiations as the only basis for a possible method for PSD, while rejecting any schema involving compulsory arbitration, which would, in their view, undermine national sovereignty and freedom of choice. The western paper put forward a graduated method for PSD within specific subject areas, concentrating on mandatory, binding procedures including arbitration for disputes of a justiciable, i.e., non-political nature. The U.S. delegation supported proposals which would involve compulsory arbitration.

Although the Montreux meeting also ended without consensus on substantive commitments, it kept the idea of PSD alive in the CSCE process by two means. First, it set forth a common approach to the elaboration of a method for PSD between or among the participating States, i.e., the parameters for any future PSD system; second, its report recommended that the Madrid Follow-up Meeting consider convening another PSD meeting.

#### *The Athens Meeting*

A second main follow-up meeting was held in Madrid from 1980 to 1983. It, too, failed to elaborate further provisions on the peaceful settlements of disputes. However, in accordance with the recommendation of the Montreux meeting, the Madrid Concluding Document mandated that another inter-sessional

meeting on PSD be held in Athens in 1984. Opening on March 21, the Athens meeting lasted for approximately 6 weeks, ending on 30 April 1984.

Prior to the start of the meeting, the various approaches to PSD could be characterized as follows: The Soviet Union and other East European countries were generally opposed to any mechanism which would include mandatory third-party procedures for settlement of international disputes, and instead favored compulsory consultations. Western and neutral countries saw some form of compulsory third-party procedures as the way to enhance already-existing methods for PSD, but differed on the extent to which those mechanisms should include legally-binding processes, e.g. arbitration.

The United States circulated two proposals in Athens. One focused on a graduated series of mechanisms (e.g., good offices, inquiry, mediation, etc.) that start out as compulsory but are only binding at the final arbitration stage if the parties agreed to proceed to arbitration. The second proposal would have established bilateral, joint commissions (modeled on U.S.-Canadian and U.S.-Mexican commissions), empowered to make recommendations on "non-security" issues within the CSCE context. Only the first proposal was formally tabled during the course of the meeting.

The first proposal shared many common elements with a European Community proposal, although the United States attempted to give greater latitude for means to avoid entering into the binding-arbitration stage. The second U.S. proposal was criticized by some Western and NNA countries as 1) disadvantaging smaller countries, 2) deviating from the multilateral nature of the Helsinki process, and 3) undermining the concept that Helsinki commitments are owed to *all* of the participating States.

The Athens meeting took place during the Stockholm Conference on Disarmament in Europe, where the United States refused to agree to a non-use of force treaty arguing, *inter alia*, that CSCE is a political process not a legal one and, in any case, it would be unacceptable to elevate military issues to treaty status

without tangible progress in the human rights sphere. During the course of the Athens meeting, the first U.S. proposal was recast in less treaty-like language consistent with the U.S. position in Stockholm.

The Athens meeting was enlivened by the U.S. renunciation on April 6, 1984, of the compulsory jurisdiction of the International Court of Justice (ICJ). Since 1946, the U.S. had accepted the compulsory jurisdiction of the Court in accordance with article 36.2 of its statute. This action, taken without consultations with the U.S. Congress, was an unsuccessful attempt to prevent Nicaragua from suing the United States before the ICJ for the mining of Nicaragua's harbors. Although this action resulted in some open criticism from the East and fairly pointed, private questions from Western and NNA countries, it did not seem to cause a complete rupture in the meeting.

The Athens meeting undertook negotiations on a substantive document, but failed to reach consensus on any of the proposed PSD mechanisms. Indeed, at the end of the meeting significant differences in positions remained unbridged and there seemed to be a general feeling that whatever common ground existed was insufficient to form the basis for commitment. The Athens Report notes that "no consensus was reached on a method" for the peaceful settlement of disputes.

*Prelude to Valletta: From The Vienna Follow-up Meeting to the Paris Charter*

During the course of the Vienna meeting (1986-89), the CSCE participating States once again attempted to address the issue of peaceful settlement of disputes. The language finally agreed to largely reiterated the basic Final Act commitment and scheduled yet another inter-sessional PSD meeting.

But a funny thing happened on the way to Valletta. In the Soviet Union, the policies of Mikhail Gorbachev had led to a progressive improvement in respect for human rights in the Soviet Union and an overall loosening of Moscow's hold over Eastern Europe. In 1989, decades of popular dissatisfaction with the Communist regimes swelled up, taking advantage of the vacuum

created as Moscow's control receded, and culminated in largely peaceful and democratic revolutions in several East European countries. During the course of 1990, the division of Germany--long the symbol of the divided continent--ended with its unification on October 3, and the Cold War was declared over. Throughout this reform process, it was widely proclaimed, particularly by those leading revolutions and reform movements in the East, that the CSCE process had played an instrumental role in bringing about these improvements.

As a consequence, in November 1990 the heads of State or government from the participating States held their first CSCE summit meeting since 1975. While the overall tenor of the summit was almost euphoric, many commentators had already begun to voice the hope and the expectation that the CSCE would now be able to tackle the most troubling issues confronting Europe today: economic instability, ethnic rivalry, restive independence movements, overwhelming waves of refugees, and new security concerns. In that context, the Valletta Meeting took on a new prominence and new expectations.

Those expectations were reflected in the Paris Charter, which stressed that "full use should be made. . . of the opportunity of the Meeting on the Peaceful Settlement of Disputes which will be convened in Valletta," and further mandated that the Council of Foreign Ministers, which first met in June 1991, would "take into account the Report of the Valletta Meeting."

#### **The Valletta Meeting on Peaceful Settlements of Disputes**

##### ***Mandate and Organization of the Valletta Meeting***

The Valletta meeting was tasked with establishing a list of categories of disputes appropriate for the involvement of a third party. That is, it was not mandated with discussing disputes *per se*, but discussing means and processes which might be used to resolve unnamed, theoretical disputes.

The Valletta meeting took place over the course of 19 working days. All sessions were scheduled as plenaries. Although the Vienna mandate provided for these plenaries to be closed, the



United States sought and achieved consensus to open morning plenaries to the public.

The agenda was divided among five items: 1) formal opening of the meeting with an address by the host country; 2) a general exchange of views; 3) examination of proposals; 4) preparation and adoption of a report; and 5) formal closure of the meeting by the host country.

#### ***U.S. Delegation to the Meeting and Public Diplomacy***

The U.S. delegation to the meeting was headed by Professor Michael Young, Deputy Legal Advisor with the Department of State, on leave from Columbia University's School of Law. John Evans of the State Department served as Deputy Head of the Delegation. Other members of the Delegation included Assistant Legal Advisor Susan Biniaz. Commission staff also participated as members of the delegation.

One public member, Professor Richard B. Bilder from the University of Wisconsin School of Law, joined the delegation during the first week of the meeting. Professor Bilder has written extensively on the subject of peaceful settlements of disputes and is widely recognized for his expertise in this area. During the course of the meeting, Estonian parliamentarian Marju Lauristin was hosted by the U.S. delegation.

Historically, the PSD area has generated less public interest than many other subjects embraced within the Helsinki process, such as security, human rights, and humanitarian issues. It was not surprising, then, that nongovernmental attendance at and press interest in the meeting was, relative to other CSCE meetings, low. In addition, the events in the nearby Gulf region may have further contributed to the small public turn-out. Nevertheless, the Maltese executive secretariat undertook all appropriate steps to ensure that the CSCE standards for openness and access were maintained for non-governmental organizations, the press, and representatives from non-CSCE states.

#### ***U.S. Objectives for the Meeting***

Given that the Vienna mandate required the Valletta meeting to produce a report, the United States was committed to achieving a document which would expand, rather than narrow, the range of options for settling disputes available to policy-makers. This was considered especially important for the newly emerging democracies in Eastern Europe, which lacked the practical experience which had developed in the West in managing and resolving state-to-state disputes.

#### ***Opening of the Meeting and the Crack-down in the Baltics***

The first day of the meeting took place in the long shadow thrown from the Gulf, to which some delegates made reference in their opening remarks, as the January 15 deadline for the Iraqi withdrawal from Kuwait expired. But the immediate attention of the delegates was drawn to the shocking events in the Baltic States where, just hours before the Valletta meeting opened, over a dozen unarmed civilians were killed in Lithuania by Soviet occupying forces. The flagrant use of force stood in stark contrast to the spirit and the letter of Principle V of the Helsinki Final Act, committing all participating States to the peaceful settlement of disputes.

No less than 18 countries individually protested the Soviet actions in their opening statements, as well as Luxembourg which spoke for the European Community. Most significantly, all former Warsaw Pact countries condemned the use of force. Romania, for example, stated, "Our position on the Baltics is well known. The use of force has led to dead and wounded. The central and local authorities should act in the spirit of the Helsinki Final Act and other CSCE instruments." Czechoslovakia described events in Vilnius as "tragic and sinister." The Hungarian representative expressed the views of many: "As we see it, domestic and international dispute settlement are interrelated. Dialogue, tolerance, respect for mutual interests characterize both. Two months after the Paris euphoria, my country was shocked by the events in Lithuania. The Soviet leadership has just subscribed to the Charter of Paris, which has as guiding ideas that democratic government is based on the will of the people and that the principles of the rule of law based on the respect for human rights

form the foundation of the new European architecture. We sincerely hope that the Baltic actions were only a one-time deviation from the generally positive political course of perestroika and not a sign of a major change in the politics of the Soviet Union." Remarks by the U.S. delegation are attached in full.

In addition, numerous statements protesting the Soviet actions were circulated to all delegations. Those statements included a press release by the Commission Chairmen Steny H. Hoyer and Dennis DeConcini; the statement by U.S. President George Bush; the formal condemnation by the European Community; the formal condemnation by NATO; the statement of the Canadian Foreign Ministry; the statement by Czechoslovak Foreign Minister Jiri Dienstbier; and the statement of Ambassador John Maresca, head of the U.S. Delegation to the Vienna Confidence- and Security-Building Measures negotiations. Subsequent protests followed additional deaths which resulted from Soviet violence in Latvia later in the meeting.

During the course of the meeting, the events in the Baltics were also simultaneously pursued in other CSCE fora. During the first week, at a meeting of technical experts convened in Vienna, Austria proposed holding a special CSCE emergency meeting to address the Soviet actions. Although the Soviet Union denied the necessary consensus for holding the meeting, every other delegation supported it. (Subsequently, at the June 1991 Council of Ministers meeting, agreement was reached to permit the convening of a CSCE emergency meeting without full consensus, provided that twelve countries endorse the original call.)

During the second week of the Valletta meeting, the crack-down was protested at the 2-day CSCE meeting of the Committee of Senior Officials, which was also held in Vienna. Finally, throughout the meeting, the CSCE human dimension mechanism was invoked by numerous countries, including the United States, with the Soviet Union.

In a pro forma act, Albania's request to attend as an observer was given consensus. In other areas, delegations delved into

matters of substance, laying markers of high expectations for the meeting, notwithstanding events in the Baltics.

#### ***Proposals***

During the course of the meeting, only eight proposals were tabled. None of these proposals was sponsored by a group of countries constituting a traditional alliance or CSCE negotiating bloc. Of the proposals, two in particular became the core for discussion, taking into account the other proposals; a proposal introduced by Switzerland and co-sponsored by Austria, Cyprus, Czechoslovakia, Liechtenstein, Poland, San Marino, and Yugoslavia, and a proposal introduced by the United States.

The Swiss proposal was considered by some to be relatively more "ambitious" because it would follow a single hierarchy of steps applicable to all disputes, which could lead to binding results. However, such an approach would only apply to a relatively narrow range of disputes. In contrast, the U.S. approach started from the assumption that there are a wide variety of kinds of disputes, and no single method of dispute resolution or settlement is suitable for all of them. Therefore, dispute settlement is facilitated by processes which relate the type of dispute in question with the most appropriate and relevant dispute resolution method.

#### ***Negotiations and the Report***

Despite the tragic events in the Baltic States, delegations in Valletta did not revert to traditional negotiating blocs, hardened along the lines of military alliances and bogged down by polarized, Cold-War style divisions. Instead, the Valletta alliances seemed to be forged on the basis of shared views on specific issues, rather than along the lines of any formal alliances.

The negotiations in Valletta evidenced a wide range of views on the appropriate steps to facilitate a peaceful settlement of disputes. In fact, the substantive debate among delegates reflected serious consideration of the fundamental questions which drive and ultimately determine the shape of various processes. Among the threshold questions delegations considered were:

- Should a PSD mechanism permit bilateral action or, consistent with the CSCE framework, must it provide a role for all participating States (the multilateral approach)?
- Should a PSD mechanism be of a "technical" (i.e., "legal") nature, or of a "political" nature? That is, is it possible to make a determination that some disputes are of a "justiciable" nature, and therefore appropriate for a "technical" resolution; alternatively, should the process emphasize political disputes of the kind that have traditionally been raised at CSCE follow-up meetings?
- Is it possible to delineate certain categories of disputes as subject to a PSD mechanism while effectively excluding others? That is, can security, political, or other disputes be excluded?
- Is it possible to develop an opt-in-opt-out clause, that would enable each country to delineate which disputes to submit to the PSD process? If so, does that undermine the long-standing CSCE principle that all participating States are equally bound by all CSCE provisions?
- Should any phase of the process be compulsory? One school of thought said that a PSD process, if agreed, should enable any one country to bring another into the process *by right*. A second school of thought seemed to reject a compulsory initiation of the process, but argues that the result of the process should be binding. (These two elements are not necessarily mutually exclusive.)
- Is it acceptable to link PSD with other issues, for example, with a non-use of force treaty?
- Does the development of a PSD process require institutionalization?

The Report ultimately adopted begins with general principles, which elaborate axioms applicable to any dispute. Those principles were immediately binding on all participating States. These include, for example, the provision that a request to have a settlement procedure does not constitute an unfriendly act and an agreement by the participating States to seek arrangements and procedures for prior notification and consultation regarding actions by one State likely to affect significantly the interests of another State.

A second section of the Report outlines a "CSCE Dispute Resolution Mechanism." This mechanism requires the participating States, should they be unable to resolve peacefully a dispute between them, to seek the assistance of a third party or parties, who are collectively if somewhat awkwardly called "the Mechanism." The ultimate task of the Mechanism is not to resolve the dispute, but to make comments and provide advice to the disputing parties regarding an appropriate and acceptable method for resolving their dispute.

This Mechanism was, however, constrained in several ways. First and foremost, the Mechanism could not exist or come into effect until "the necessary arrangements" were established--that is, until the Mechanism was placed under the auspices of some person or institution capable of overseeing the process of selecting the third party or parties. As a rule, CSCE documents do not create "provisional" commitments which require subsequent action to be brought into effect.

Second, the Mechanism was limited by an exceptions clause that prohibits the Mechanism from being used if either party considers the dispute to raise issues concerning "territorial integrity, or national defense, title to sovereignty over land territory, or competing claims with regard to the jurisdiction over other areas." This self-judging clause, contained in section XII, guts the Mechanism of the power to deal with many of the most pressing issues between and within the participating States.

#### *Conclusions*

The dissolution of the East-West polarity created greater expectations regarding the potential for creating a CSCE PSD mechanism. In fact, the removal of that layer of differences has unmasked fundamental questions which must be answered in order to create any PSD system within the CSCE. At the Valletta Meeting, it became clear that the participating States simply do not share a consensus vision regarding how this issue should be approached in the context of CSCE.

The Valletta Report reflects the compromise struck between the desire to maintain the momentum achieved in other recent

inter-sessional meetings such as Bonn and Copenhagen--each of which concluded with substantive new documents--and the reality that, at least in the area of PSD, considerable differences remain among the participating States.

***The Status PSD after the Berlin Council of Ministers Meeting***

As a practical matter, the Council of Ministers meeting, held June 19-20, 1991, was asked to make the decision that delegations were unable to make in Valletta: Where should the PSD mechanism be housed? While several possibilities were considered, including the Permanent Court of Arbitration at the Hague, the Center for the Prevention of Conflicts in Vienna, and the Secretariat in Prague, it was ultimately decided to house the Valletta Mechanism at the CPC in Vienna, under the auspices of its Director. Participating States were invited by the Council to communicate by August 30, 1991 the names of up to four persons to be included on the register of mechanism candidates.

The Valletta Report also notes that the next CSCE Follow-up Meeting is scheduled to open in March 1992 and recommends that "the commitments contained in the present Report *as well as their implementation* . . . be kept under review" (emphasis added). It remains to be seen whether or not, in fact, the Valletta Mechanism will be implemented prior to the Helsinki meeting. The existence and creation of other CSCE mechanisms (the Human Dimension Mechanism, the Unusual Military Activities provisions under para. 17 of the Vienna 1990 Document on Confidence- and Security-Building Measures, and the newly created Berlin Emergency Mechanism) provide alternatives for raising issues besides the narrowly construed Valletta provisions.





**REPORT ON THE SYMPOSIUM ON  
THE CULTURAL HERITAGE  
OF THE CSCE PARTICIPATING STATES**

**Summary**

From May 28 through June 7, over 400 delegates met in Cracow, Poland, for the Symposium on the Cultural Heritage of the CSCE participating States. Mandated by the 1989 Vienna Concluding Document, the meeting was originally intended to provide a forum for discussion and an exchange of views among experts in the field of cultural heritage.

The opening and closing plenary session were structured around 6 days of closed working group meetings. Working Group A focused on intangible cultural heritage such as ways of life and language. Working Group B focused on tangible aspects of heritage such as sites, structures, and objects. Unfortunately, the parallel drafting groups, tasked by the symposium with negotiating a concluding document, became the main focus of the meeting. Regrettably, this seriously detracted from the meeting's original purpose: a dynamic exchange among experts in the field of cultural heritage.

After years of CSCE meetings at which agreement on a substantive document was at best illusive if not altogether impossible, the Cracow Symposium illustrated the preoccupation CSCE now seems to have with getting down as many words on paper as possible--while the newly found opportunity lasts--even at the expense of traditional dialogue on implementation. In fact, there was a pervasive view among many participating States in Cracow that a document would provide necessary evidence of the vitality and success of the CSCE process as a whole; that to conclude a CSCE meeting without a document would signal a setback in the process or a continued existence of Cold-War era barriers. Although in the end a substantive document was agreed, it could only be achieved in the limited 2-week framework at the expense of the planned dialogue among experts.

### **Background to and Organization of the Meeting**

The first CSCE meeting devoted exclusively to the field of culture was the Budapest Cultural Forum, held in 1985. A 6-week meeting, the Budapest Forum had mixed results. Frank discussion of human rights-related cultural problems was possible, but agreement on a substantive document dealing with these problems was not. The meeting was also marred by the unwillingness of the Hungarian hosts to provide full access for non-governmental organizations. Nevertheless, in the overall context of East-West relations at that time, the meeting was considered a qualified success.

The Cracow Symposium was mandated by the Vienna Concluding Document, at a time when East-West relations were still quite strained. Stemming from a proposal originally introduced by Poland and Austria, the meeting was intended by its proponents to showcase an area where Poland had already implemented considerable reforms, as well as to take advantage of a conference center being built as a joint Polish-Austrian venture. In addition, there was expectation in some quarters that an intersessional meeting on culture would, almost by definition, delve into some of the emerging questions relating to minorities and regional cultures.

At the Paris Summit in November 1990, the CSCE heads of state and government underscored the importance of the Cracow Symposium and invited the Council of Europe to contribute to the meeting. In addition, they resolved to consider further this subject at the Helsinki Follow-up Meeting, scheduled to convene in March 1992. At the same time, the heads also agreed to hold a separate meeting on national minorities, which was convened in July 1991. With the scheduling of a separate meeting devoted exclusively to the subject of national minorities, delegates in Cracow by and large reserved this issue for the July meeting.

According to the agenda, timetable, and modalities set forth in Annex IX of the Vienna Concluding Document (1989), the Cracow Symposium opened with an address by a representative of the host country followed by introductory statements by representatives of the participating States. In addition, contributions were

made by UNESCO (the United Nations Educational, Scientific and Cultural Organization) and the Council of Europe. These statements lasted a day and a half and were made in open plenaries. Similarly, the symposium concluded with a day and a half of open plenaries reserved for closing statements.

Five half-days were set aside for Study Group A and five half-days were set aside for Study Group B. Study Group A was tasked with discussing the sources and manifestations of the cultural heritage of the peoples of the participating States, including its contemporary aspects, and access to them; the interrelationship between regional and other features of the cultural heritage; and the role of the sciences and humanities. Study Group B was tasked with discussing implementation of cooperation programs; preservation of the cultural heritage, including socio-economic aspects, and its inter-relationship with the protection of the environment; and the use of modern technical methods and means in the preservation of the cultural heritage and in the dissemination of knowledge about it. Both Groups were to consider the scope for expanding contacts, communications and exchanges of information between institutions, experts and other interested persons in the field of cultures; and the scope for the creation, dissemination, and cooperation.

#### **U.S. Delegation to the Meeting**

The U.S. Delegation was headed by Ms. Nancy Clark Reynolds, Vice Chairwoman of Wexler Group/Hill & Knowlton Public Affairs and a Member of the Board of Directors for the National Museum of American Indians and the National Park Foundation. The U.S. Delegation drew its members from several Government agencies, including the National Park Service, the United States Information Agency, the President's Advisory Council on Historic Preservation, and the Helsinki Commission. In addition, the delegation was joined by public members from the World Monuments Fund and the Council on Foreign Relations.

### **Context and Opening of the Meeting**

As a first order of business, Albania requested and obtained consensus to attend the Symposium as an observer. Representatives of UNESCO and the Council of Europe attended as contributors.

After a welcoming message from President Lech Walesa was read, Polish Prime Minister Jan Krzysztof Bielecki opened the Symposium with a speech that was remarkable for its frank assessment of the disastrous impact of communism--"an insane experiment"--on Poland's culture. He stated that, "Poland's communist past is but a 40-year aberration in a history that stretches over a thousand years. Poland's cultural heritage belongs to one thousand years, not to a short-lived experiment imposed on the Polish people, imposed by the artificial line drawn across Europe at the end of the last war. . . . Freedom of the individual, political freedom, freedom of thought, freedom of expression, tolerance for the ideas of others, these are Poland's true cultural heritage, the very things communism tried to destroy." The Romanian and Czechoslovak representative made similarly blunt and critical assessments of the destructive consequences of communism.

In an apparent rejoinder to Prime Minister Bielecki's remarks, Soviet Minister of Culture Gubenko opened by calling for the delegates to stand in the memory of those Polish and Soviet fighters who had fought to enable Cracow to survive WWII. He then went on to argue that the recent dismantling of the Cracow statue of Soviet Marshall Koniev, commemorating his role in WWII, constituted the destruction of cultural heritage. Minister Gubenko went on to compare Prime Minister's Bielecki's opening remarks to "dancing a tap dance [*chechotka*] on the coffin of the socialist system with all the lightness of a weight-lifter," and asserted that the Prime Minister's remarks lacked the formal politeness required in such settings. Finally, Minister Gubenko criticized two countries, including the host country, for attempting to bring pressure on the internal policies of the USSR. Presumably, this was a reference to Poland's and Denmark's decision to host Lithuanian and Estonian representatives respectively on their delegations.

In response to these remarks, Polish Foreign Minister Skubiszewski summoned the Soviet Charge d'Affaires to complain about the remarks made by Soviet Culture Minister Nikolai Gubenko. Polish media reported that the Polish Foreign Minister said Gubenko's speech "violated the international code of good conduct."

In fact, Soviet indignation appeared particularly disproportionate given the mere token support the Baltic States received for their efforts to join the CSCE. Representatives from Lithuania and Estonia continued to be relegated to "guest status," a title that is essentially the same status as that available to any member of the public and only permits access to non-secured areas of the conference facilities. (Latvia chose not to attend the meeting.) During the opening remarks, U.S. Head of Delegation Reynolds welcomed the Baltic presence.

Although there was considerable support among the participating States for extending observer status to the three Baltic States, and the Helsinki Commission continued to urge that the United States formally table a proposal to that end, the Soviet Union again privately indicated that it would not give consensus to any proposal for Baltic observer status. Consequently, delegations in Cracow declined to take any action on the Baltic situation which might be interpreted by the Soviets as "confrontational." During the course of the meeting, there was a public demonstration in front of the Forum Hotel, where the Study Group sessions were held, calling for Baltic independence and Baltic participation in the CSCE process.

#### **Working Bodies and Public Participation**

As an integral part of the CSCE Symposium on the Cultural Heritage, Cracow, Poland, May 28 to June 7, 1991, two sessions of working groups were scheduled. The topics for intervention by the participating delegations were quite diverse, focusing on the cultural heritage and its protection, past, present and future. Consensus was reached on May 31 to permit the representatives of the Council of Europe and UNESCO to respond to questions or comments expressly addressed to them, with the explicit proviso

that this would not be regarded as setting any precedent for future meetings.

The study group process involved formal sessions in the morning and afternoon sessions with a rotating chair. The topics discussed ranged from evaluation of the arts and cultural heritage in Europe as a general topic, to such specific ones as the protection of historic monuments or archives in specified locations depending upon the presentation by the speakers. Specific programs for improving cooperation and communication among the participating nations ranged from special exhibitions to which several members might contribute and support, such as the "Bronze Age" in European archaeology proposed by Sweden to cooperative ventures for the protection of modern films of the twentieth century as an exercise in conservation of materials. Throughout the oral presentations, and in several of the papers submitted, stress was placed on the numerous examples of cooperation which presently exists and is working, but which yet requires additional efforts to expand such efforts in order to more adequately deal with the varieties of cultural needs among the participants. Ireland, for example, proposed that artists-in-residence programs would facilitate such cooperation among the CSCE members, a project which was seconded by some other participants. A broad range of cultural programs was discussed, some repeatedly, in the area of media as a means to facilitate the expansion of the cultural heritage, technical methods in use by various nations to protect their patrimony, legal systems for the protection and preservation of the cultural properties, and training or educational programs as a means to enhance further the common theme of cooperation and communication among nations.

A number of East European delegations drew attention to the cultural losses incurred by their 40 some years under authoritarian rule. The American delegation contributed both in the form of comments to statements made by others as well as formal interventions. The responses at the end of the formal sessions offered by representatives of the Council of Europe and UNESCO were considered a welcome contribution by the experts.

### Proposals, Negotiations, and Document

The Vienna mandate for the Cracow Symposium did not require the adoption of a document, and instead anticipated that "projects and proposals submitted to it will be forwarded by the Government of the host country to the next Follow-up Meeting." Indeed, the prospect of trying to draft a substantive document among 34 countries in 9 short working days minimized the likelihood of achieving a document and reflected the Vienna mandate's original focus on an exchange of views. But the Cracow meeting reflected the fundamental shift in attitudes toward the CSCE process which had emerged since the conclusion of the Vienna Follow-up Meeting: that is, a majority view had evolved which considered a document necessary evidence of the vitality and success of the CSCE process as a whole and that, accordingly, the failure to produce one would suggest insurmountable conflicts where none really exist. Although the United States expressed concern that such drafting sessions would detract from the exchange of views envisioned by the mandate and provided for in the working groups, by the end of the first week a parallel drafting group was formed and tasked to meet in tandem to the Study Groups.

Beginning with the second week, this drafting group engaged in marathon negotiations, working into the early hours of the morning or, in the case of the secretariat staff, all night. All in all, 35 proposals were introduced during the course of the meeting, most of which concerned a specific subject or area of concern. A few, however, were broadly drafted attempts to embrace the range of issues conceivably arising within the scope of the meeting. These proposals, along with some non-papers, ultimately formed the basis for a coordinator's draft document, and were introduced or circulated by the Pentagonale countries (Austria, Czechoslovakia, Hungary, Italy, and Yugoslavia); by Poland, the host country; by France; and by the 12 member-states of the European Community. Of the more specific proposals, many of them were grafted on to the coordinator's text.

During the negotiation process, there was little discernable coordination among traditional negotiating groups, with the notable exception of the Pentagonale. Even there, however, group

discipline largely manifested itself in the introduction of formal proposals, rather than in response to draft texts on the table. Disagreement on draft language often stemmed from different views among the participating States regarding the nature and degree of government involvement in the field of culture and the willingness of some countries to commit to additional financial responsibility in this area. Nevertheless, in the end, the Cracow meeting produced the longest amount of agreed text in the shortest amount of time in CSCE history.

The document ultimately agreed includes some new substantive commitments, although it also includes language that is somewhat repetitive of previously agreed CSCE texts. Among the themes that appear throughout the document is an emphasis on tolerance and diversity and a recognition of the important role of non-governmental actors in preserving cultural heritage. The document also noted the valuable contributions of the experts from the two Study Groups. These contributions will be deposited with the CSCE Secretariat in Prague which will, in turn, make them available to the public.

#### Conclusions

The Cracow Symposium illustrated the now pervasive view among many CSCE states that a document provides necessary evidence of the vitality and success of the CSCE process as a whole; that to conclude a CSCE meeting without a document signals a setback in the process or the continuation of Cold-War era barriers. Although in the end a substantive document was agreed, it could only be achieved in the limited 2-week framework at the expense of the planned dialogue among experts.

The meeting was generally considered a success from the perspective of those seeking a document. But from the perspective of many of the cultural experts attending the meeting, the format of traditional CSCE working sessions was not conducive to a dynamic exchange of views--a criticism shared by experts at some other CSCE meetings, notably, the London Information Forum. In this vein, it was suggested that future meetings of this nature should be structured to allow for more informal discussions among experts.



## **THE GENEVA CSCE EXPERTS MEETING ON NATIONAL MINORITIES**

### **Summary**

From July 1-19, 1991, the 35 States participating in the Conference on Security and Cooperation in Europe (CSCE) met in Geneva, Switzerland, to discuss questions relating to national minorities. The Geneva meeting, mandated by the Paris Charter for a New Europe in November 1990, was held in response to growing ethnic tensions in Europe, especially in East-Central Europe and the Soviet Union. The meeting was tasked to examine national experiences in dealing with minority questions, review the implementation of existing CSCE commitments relating to persons belonging to national minorities and, finally, consider new commitments in this area.

The outcome of the Geneva meeting presents a mixed picture of the ability of the CSCE process to deal effectively with national minority questions. There was a good discussion of national experiences, in which each contributing delegation described its government's approach to the specific circumstances of minorities in its State. There was, however, a great and unfortunate reluctance to engage in a thorough and specific review of implementation of existing CSCE commitments, despite wide acknowledgment that these commitments--and especially those in the Copenhagen document--were both strong and detailed. Only the United States and, to a lesser extent, Hungary and a few other countries were willing to address directly specific problems in CSCE implementation.

The document adopted at the end of the meeting preserved the integrity and focus of previous CSCE provisions and, in fact, added a few positive new commitments. These new commitments are relatively modest, however, and raise the question, in light of the number of CSCE inter-sessional meetings which have also adopted documents, of whether existing commitments are being diluted by the plethora of new ones.

In the end, the utility of the Geneva meeting must be found in the fact that it focused the attention of the participating States on extremely sensitive issues which they have previously sought to avoid and on which they very frequently disagree. In addition, the discussion in Geneva has set the stage for further efforts in the CSCE, most notably at the third meeting of the Conference on the Human Dimension in Moscow later in 1991, to deal with growing intolerance and conflict based on race or ethnicity.

#### **Negotiating History of the Geneva Meeting**

Most of the inter-sessional CSCE meetings following the Vienna Follow-Up Meeting were mandated by the Vienna Concluding Document, but in light of the major changes which had taken place in Europe in 1989 and 1990 and the new problems emerging from these changes, the Geneva meeting on national minorities and the Oslo meeting on democratic institutions were added to the already extensive schedule of meetings by the Paris Summit in November 1990.

Respect for the rights of persons belonging to national minorities has been one of the many important parts of Principle VII--Respect for Human Rights and Fundamental Freedoms--of the 10 Principles Guiding Relations Between States contained in the Helsinki Final Act. Subsequent CSCE documents, and the Vienna Concluding Document in particular, strengthened Principle VII commitments and expanded national minority concerns to Basket III in addition to Basket I, where the 10 Principles are located. National minority questions therefore have been relevant to the mandate of the three Conference on the Human Dimension (CHD) meetings mandated in Vienna to focus on the broad range of human rights and humanitarian concerns covered by the CSCE process.

However, at the second CHD meeting, which took place in Copenhagen in June 1990, national minority issues emerged as among the more contentious human dimension issues. Because of definitional questions and differences in situations and approaches to minority problems, as well as the rise of inter-ethnic tension and violence, many at the Copenhagen meeting felt that, in

addition to the numerous commitments to which agreement was reached at Copenhagen, the subject deserved a full meeting of its own. Switzerland and a new informal grouping of CSCE countries known as the "Pentagonale,"<sup>1</sup> which dominated the discussion of minority issues at Copenhagen, were the leaders of this effort. Since the Copenhagen meeting could not mandate other CSCE meetings, however, the participants agreed in the document to "consider convening a meeting of experts for a thorough discussion of the issue of national minorities."

During the preparations in 1990 for the Paris CSCE Summit, a proposal for a CSCE experts meeting on national minorities was tabled. Initially, the United States and other countries objected to this and other proposals which added to an already extremely hectic CSCE itinerary leading up to the next main follow-up meeting in Helsinki in 1992. Nevertheless, it was argued that there was an urgent need for the CSCE to examine national minority questions more closely than could be done at the CHD meetings. As a result, consensus was finally reached to hold a three-week meeting in Geneva in 1991 on the issue, and the meeting was mandated in the Paris Charter for a New Europe in light of the "urgent need for increased cooperation on, as well as better protection of, national minorities."

#### **Organization of the Meeting**

The agenda and the modalities for the Geneva meeting are provided by Annex III of the Supplementary Document of the Paris Charter. Following opening statements in plenary sessions that were open to the public, the meeting divided into three subsidiary working bodies (SWB's) that were closed to the public. SWB-A provided a forum for the exchange of views on practical experience, in particular on national legislation, democratic institutions, international instruments, and other possible forms of

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<sup>1</sup>Austria, Czechoslovakia, Hungary, Italy, and Yugoslavia. In 1991, Poland joined this Central European group which transcends the three original "blocs" or alliances. With Poland as a participant, the group is now often referred to as the "Hexagonale".

cooperation. SWB-B was mandated "to review the implementation of the relevant CSCE commitments and consideration of the scope for improvement of relative standards." SWB-C was tasked to consider "new measures aimed at improving the implementation and the aforementioned commitments." Meetings these three bodies were arranged so that, in general, the participants would first describe their own approaches to minority questions, then compare their performance to the common standards of CSCE provisions, and, finally examine ways to improve the implementation of existing provisions.

Following this work closing statements and a "Summing Up" which in effect meant a concluding document or report, were held in open plenary sessions. The Annex specified that the "Summing Up" would be taken into account in the next CSCE Council of Ministers.

#### **U.S. Delegation to the Meeting**

The U.S. delegation to the Geneva meeting was led by Ambassador Max M. Kampelman, a partner in the law firm of Fried, Frank, Harris, Shriver and Jacobson. Previously, in addition to serving as counselor at the U.S. Department of State and head of the U.S. delegation to the Negotiations on Nuclear and Space Arms, Ambassador Kampelman served as head of the US delegation to the Madrid CSCE Follow-Up Meeting (1980-83) and The Copenhagen Meeting of the Conference on The Human Dimension (June 1990). State Department officials, including CSCE officers and a Deputy Assistant Secretary for Human Rights and Humanitarian Affairs, a U.S. Information Agency Representative serving as press officer, and the U.S. representative to the United Nations Human Rights Commission, were also on the delegation, in addition to several members of the staff of the Helsinki Commission, including the Commissions Staff Director and Senior Advisor for Soviet and East-Central European affairs. The U.S. mission to The United Nations in Geneva supported the delegation by providing us with experts on international law and administrative personnel.

In line with past meetings of the CSCE, the U.S. delegation also included a number of Public Members prominent individuals with expertise on human rights and national minority questions. The presence of these individuals on the delegation underscores the importance of human rights, and of human rights both to the U.S. Government and the American people. They also provide the delegation with valuable expertise in areas under discussion in Copenhagen as well as enhanced contacts with various non-governmental organizations and interest groups. The Public Members in Geneva were:

- Pamela Cohen, President, Union of Councils for Soviet Jews
- Laszlo Hamos, Hungarian Human Rights Foundation
- A.E. Dick Howard, School of Law, University of Virginia
- Alton Jenkins, Harvard Negotiation Project
- Leonid Kishkovsky, President of the National Council of Churches
- Thomas Remeikas, Lithuanian American Community Inc.
- Raymond Shonholtz, President National Institute for Citizen Participation and Negotiation
- Rudi A. Unterthiner, President of the National Italian American Foundation.

#### **Opening of the Meeting and General Discussion**

The 35 participating states convened for an experts meeting in the Geneva International Conference Center on July 1, 1991. The Council of Europe and the United Nations Center for Human Rights were also in attendance. There were no proposals at the beginning to grant observer status to the three Baltic States--Estonia, Latvia, and Lithuania. Instead a so-called "Friends of the Baltic" group similar to those at other recent CSCE meetings, was informally formed under a Swedish Chairman to brief the Baltic representatives on developments in the meeting, to hear their concerns, and more broadly to demonstrate continued support for the Baltic cause. The group, orchestrated weekly sponsors for each of the Baltic delegations. Under the sponsors' auspices, the Baltic representatives were issued special badges enabling them to attend open plenary sessions, but not the closed Subsidiary Working Body sessions.

The meeting was formally opened with a welcoming statement by the host country made by Rene Felber, Federal Councillor and Head of the Federal Department of Foreign Affairs of Switzerland. In his statement Councillor Felber outlined briefly the historical treatment of national minority issues in European diplomacy, concluding that the CSCE process "has enabled a decisive turning point to be reached by defining the problem of minorities as being henceforth a question of human rights."

Opening statements were then given by each of the participating States. In his opening statement, Ambassador Kampelman described the progress that has been achieved in creating a Europe "whole and free," but noted that "strong ethnic and national minority tensions cast a kind of evil spell . . . somewhat like a cloud interfering with the sun's rays as we look to a new dawn." Noting some specific problems particularly in Yugoslavia Ambassador Kampelman said that there was no "magic pill" to national minority questions and concerns, and that U.S. solutions may or may not work elsewhere but that "democracy and the principles of human liberty and freedom and the rule of law are fundamental if we are to act constructively in the face of these challenges." While he did not propose giving the Baltic States observer status in the meeting, the U.S. Ambassador nevertheless made a strong statement on their behalf, asserting that "our efforts to create a Europe whole and free call for the realization of those aspirations so that in the not too distant future, the circle of states around this table includes within it representatives from Latvia, Lithuania, and Estonia."

Other delegations outlined their views and hopes for the meeting in their opening statements. Practically every delegation taking the floor raised concern about the fighting that was taking place in Yugoslavia, and Slovenia in particular, and condemned the use of force as a way to deal with ethnic differences. In response, the Yugoslav representative informed the meeting that the "critical phase" of the crisis was over and that "the general situation is gradually stabilizing." He noted, among other things, the decision taken the day before the Geneva meeting opened to permit Stipe Mesic, the Croatian representative on the Yugoslav

state presidency, to assume the position of president of that collective body, an act which had been blocked in contravention to established rules since mid-May and which had added to the political chaos in Yugoslavia.

Following the opening statements by delegations and contributions by the Council of Europe and the United Nations Center for Human Rights, the Geneva meeting broke up into three subsidiary working bodies (SWBs). In SWB-A, dealing with national experiences, delegations described their own general approaches to minority questions. Some countries noted, in particular, the impact of their overall political structure--a federation for example--in meeting the concerns of minority groups, while others noted more specific policies, such as allowing use of languages other than the dominant one of the country for official purposes. Still others commented on how their laws and policies dealt with the question of collective rights in addition to the protection of individual human rights in regards to persons belonging to national minorities. The U.S. delegation was active in this SWB, giving presentations on such topics as race, ethnicity, and American law, recent civil rights efforts, and U.S. legislation against hate crimes.

In contrast to the willingness of each delegation to describe the efforts of the government it represented, there was considerable reluctance to engage in a thorough and specific implementation review, the task of SWB-B. While it was acknowledged that existing CSCE commitments--especially those contained in the document of the Copenhagen meeting--were strong and detailed, and that existing problems could be corrected through better implementation, almost all participating States refrained from mentioning specific problems in specific countries. Some openly called such a frank review a relic of the confrontational period of division between East and West. Only the United States and, to a lesser extent, Hungary and a few other delegations were willing to raise specific concerns, acknowledging at the same time problems in their respective countries.

In explaining the U.S. position strongly favoring a thorough implementation review, Commission Staff Siretor Samuel Wise,

at the opening of SWB-B, stated: "Despite obvious improvements, problems still exist. Ethnic strife poses specific and serious dilemmas for many countries--especially for many of those which are only now in the process of political democratization . . . This is why, after all, the participating States agreed in Paris to hold this meeting . . . If we are to meet the intent and expectations of this meeting it is incumbent on us to discuss these problems in an open forthright manner." Topics covered in U.S. statements, which noted positive developments in addition to continued problems, included popular discrimination and ethnic tensions, the generally positive but sometimes negative effects of political decentralization in states such as the Soviet Union and Yugoslavia on the protection of the rights of minorities, anti-Semitism, violence and discrimination against Roma (Gypsies), the right of individuals to choose their own ethnic identity, and education. Among the countries in East-Central Europe, Yugoslavia and Romania were most frequently mentioned in terms of continued non-compliance, followed by the Soviet Union.

#### **New Proposals and Negotiating a Final Report**

The energy and interest missing from the implementation review exercise emerged in the tabling of new proposals and negotiation of a document to be adopted by the delegations at the meeting. Indeed, some delegations admitted that they sought to tone down their statements in order to improve the possibility of adopting a substantive document to the meeting. Reflecting a trend since the revolutionary political changes in East-Central Europe, greater emphasis was placed on the adoption of a document as an indicator of the success of the meeting, especially since the last six intercessional--all but the first two since the Vienna Follow-Up Meeting--also adopted documents. In rhetorical terms, the improvements in CSCE implementation have shifted the focus back to words over deeds.

During the course of the discussions in SWB-C, tasked to consider new matters, 19 proposals were formally tabled. Two of the proposals, one by the 12 states belonging to the European Community (EC) and the other by the six states which comprise the "Pentagonale" group covered a wide variety of minority rights



issues. Other proposals dealt with a single topic, such as a Yugoslav proposal on Roma, a Canadian proposal on acts of advocacy of hatred, or a Swiss proposal on the recognition of diplomats for study from other participating States in a minority language.

Still other proposals--four in all--sought to elaborate a CSCE mechanism to deal with national minority problems and inter-ethnic disputes. Each proposal sought to task a group of individuals to deal with specific minority concerns but differed considerably in such modalities as how a grouping would be established, how its membership would be selected, what the limits of its mandate would be, and what obligation the state or states of concern would have to accept and work with the group. One of the proposals, tabled by the U.S. delegation, would have established a resource list of experts from which could be chosen a three-person panel to observe, collect relevant information and potentially offer its good offices to facilitate dialogue and agreement among interested and affected parties.

In order to receive comments on the proposals and to combine them and other suggested language in a draft document that could serve as the basis for negotiation, the head of the Swiss delegation, Ambassador Jean-Pierre Ritter, was selected by the meeting to serve as Coordinator. The Coordinator made his first attempt at a draft during the last weekend of the meeting, and issued a paper which adopted the wording from all proposals, although sometimes in slightly moderated form. In some cases, in fact, paragraphs of the document coming from different proposals were in direct contradiction with each other. The last week of the meeting therefore began with a lengthy Coordinator's text, from which a consensus document, or report, of the meeting would be sought. The draft included the U.S. proposal for an experts panel, as well as U.S. suggested language on the publication of statistics relating to hate crimes, the importance of reviewing implementation and the work of non-governmental organizations (NGOs).

The difficulties that would be encountered in reaching any consensus were evident immediately. The Swiss draft was riddled with amendments and counter-amendments rapidly fired from all sides of the negotiating table. Some delegations objected to the

heavy focus on protecting and promoting the identity of national minorities at the expense of ensuring non-discrimination and equal opportunity, a reflection of differences between those, such as Hungary, who generally view minority rights as collective rights and those such as the United States, who view them as individual rights. Delegations of countries where sizeable minorities exist, such as Yugoslavia, Romania, and Bulgaria, sought to bring the language of the draft closer to their own policies and practices, while those of countries which deny the existence of certain minority or minorities on the respective territories, such as Greece and France and to an extent Bulgaria as well, sought to ensure that they would not be committed to recognize groups which may claim otherwise.

Other delegations simply sought to have the document more closely reflect their own approach to a certain aspect of national minority questions, and Turkey and Yugoslavia pressed for language on the similar but separate issue of the treatment of migrant workers in Europe, to the objection of other delegations. Several provisions caused delegations to fear that the results of Geneva would detract from those of Copenhagen and other CSCE meetings which dealt with national minority issues.

Delegations agreed on the need to build upon the Human Dimension Mechanism or otherwise create a way for the CSCE to address minority concerns in a specific manner, but they could not rally around any of the proposed ways to do so. Moreover, delegates came to question the appropriateness if not the authority of the narrowly mandated Geneva meeting undertaking an effort more in line with the mandate of the Conference on the Human Dimension of the CSCE, scheduled to meet in Moscow within two months of the Geneva meeting's close.

After considerable time and effort, a first reading of the Coordinator's text allowed for the production of a second text which sought to bring the delegations closer to consensus. The firmly held positions which led to the plethora of amendments to the first draft, however, drowned the second draft in a quagmire of repeated or additional amendments. At this stage, Ambassador Ritter questioned the utility of proceeding further and, after

finding objection in principle to a large number of paragraphs in the second draft, declared the negotiations in recess with only two days left to the meeting. The next day, he introduced a third and considerably scaled-down draft which covered only those few areas of the previous texts where agreement was reached or seemed possible. This draft, however, was immediately under threat as well, since those same areas were, for the most part, of little real interest to most if not all of the delegations, and a number of amendments to it were given by delegations directly to the Coordinator.

Meanwhile, the U.S. delegation, concerned that any document adopted at the Geneva meeting might step back from or jeopardize the high-quality commitments on national minority issues in the Copenhagen document, spearheaded an effort to produce an entirely new document that put what were considered the best elements from the proposals into a fresh draft. Rather than elaborate upon the mechanism, however, the draft merely recommended that the third Human Dimension meeting consider undertaking that task. In consultation with other delegations, this draft was reworked within the group of sixteen States which comprise NATO, all of whom co-sponsored the document along with Ireland when it was formally tabled in the meeting as proposal "REM.N.20."

Soon thereafter, Ambassador Ritter reconvened the negotiations, asking if it were possible to accept the new draft text. Many delegations who did not co-sponsor the proposal then took the floor, agreeing to accept the text as drafted as long as all others could do the same. Delegation after delegation withdrew their previous amendments as pressure built to achieve consensus. The last hold-out was the delegation on Yugoslavia, which insisted on its right to make changes and reintroduced an amendment which specified that national minorities, unlike peoples, do not have the right to self-determination. After a short break during which consultations were held among delegates, the negotiating group reconvened, and the Yugoslav delegation agreed to withdraw its amendment. Late on the eve of the meeting's close, the 35 delegations agreed ad referendum to the draft report of the meeting.

### The Geneva Report

On the morning of Friday, July 9, proposal REMN.20 was formally adopted by consensus as the report of the Geneva meeting. At first desiring that a statement be attached to the adopted report reflecting the view that national minorities do not have the right to self-determination, the Yugoslav delegation agreed simply to make a statement to that effect, to be inserted into the official journal as its national position.

The report, while modest in its advances, nevertheless preserved existing commitments regarding national minorities in Copenhagen and other CSCE documents and built upon them in a few areas. Among the more important provisions are those in which the participating States:

- emphasize that human rights and fundamental freedoms are the basis for the protection and promotion of the rights of persons belonging to national minorities;
- stress the continued importance of a thorough review of implementation of CSCE commitments relating to persons belonging to national minorities, and that issues regarding national minorities do not constitute exclusively an internal affair of the respective State;
- state that, in areas inhabited mainly by persons belonging to a national minority, the rights of persons belonging to that minority, of those belonging to the majority population of the respective State, and of those belonging to other national minorities in these areas will be equally protected;
- consider favorably the presence of observers at elections held below the national level and will endeavor to facilitate their access;
- acknowledging the diversity of situations and constitutional systems and therefore recognize that various approaches to the implementation of CSCE commitments on national minorities may be appropriate, listing 14 such approaches

which could be helpful in improving the situation of national minorities on their territories;

- recognize the major and valuable role that individuals, non-governmental organizations, and religious and other groups play in fostering cross-cultural understanding, including across frontiers, will encourage and not hinder the work of such individuals, organizations and groups and welcome their contributions in this area;
- stress their determination to condemn, on a continuing basis, acts of racial, ethnic and religious hatred, anti-Semitism, xenophobia, and discrimination;
- recognize the particular problems of Roma (Gypsies), and will undertake measures to achieve full equality of opportunity for Roma with the rest of the population;
- will take effective measures, including the adoption, in conformity with their constitutional law and international obligations, of laws prohibiting acts that constitute incitement to violence based on racial, ethnic or religious discrimination, hostility or hatred, make efforts to collect and publish data on hate crimes, and consult and exchange views on the international level on these crimes;
- encourage various types of transfrontier cooperation at the national, regional, and local levels; and
- recommend that the third meeting of the Conference on the Human Dimension consider expanding the Human Dimension Mechanism.

#### **Closure of the Meeting**

The Secretary of State of Switzerland, Klaus Jacobi, delivered a closing address to the meeting. In their subsequent closing statements, the delegations welcomed the adoption of a report containing specific commitments regarding national minorities and the rights of persons belonging to them, especially in light of the

differences between delegations which were made evident during the course of the negotiations.

In his concluding remarks, Ambassador Kampelman welcomed the adoption of the report "with a profound sense of appreciation for the constructive efforts of each and every one of us. We have seen here a Europe cooperatively and successfully at work." On the meeting as a whole, he added: "All our delegations faced our responsibilities honestly, openly and directly. The troublesome issue of the Baltic States' desire to regain their independence was discussed in this official forum and in corridors. . . . We discussed the troublesome problems faced by Hungarians in Romania; the unsatisfactory treatment of Albanians in Kosovo; the hopeful developments of the condition of Turkish people in Bulgaria. We explained conditions in many of our countries, on occasion refreshingly acknowledging shortcomings. . . . We built on Copenhagen and took the distasteful and shameful issues of discrimination and prejudice against Roma and Jews out of the dark closet of silence and into the daylight of recognition. . . . We regrettably did not fulfill our task to forge a procedure which will permit CSCE to implement the plans and hopes we have set forth in words. We intend to do so in Moscow at our September meeting."

Following the closing statements, the Geneva meeting formally closed on July 19, 1991.

#### NGO Attendance and Activities

National minority questions and inter-ethnic disputes are of concern to a large number of non-governmental organizations (NGOs), including ethnically-based organizations, human rights groups and research institutions active in the field of dispute settlement. This interest was reflected in the attendance of dozens of NGO's at the Geneva meeting, including many from the United States. The U.S. delegation worked closely with these organizations and other private individuals attending the meeting, assisting them in gaining access to the conference center, briefing them on U.S. views of the meeting, listening to their views and concerns and attending the events which they organized.

All plenary sessions of the meeting, like other non-military CSCE meetings mandated by the Vienna Concluding Document and the Paris Charter, were open to the public, and NGO representatives as well as private individuals were able to observe the proceedings. The sessions of the subsidiary working bodies, however, were closed to public attendance, as were the informal negotiating sessions.

The Swiss hosts did an outstanding job in accommodating the NGO presence in Geneva. For example, they greatly facilitated NGO access to the meeting. Unlike previous meetings, where NGO representatives had to be escorted into the conference center by a delegate, here they were able to pre-register and therefore gain immediate access. While security was tight, it did not impede entering the conference center.

For open plenary sessions, more than ample room for NGOs and the press was available in a balcony overlooking the meeting hall, with technical equipment available for simultaneous interpretation into all six official CSCE languages.

In addition, adjacent to the plenary hall, a large room was reserved for exclusive use of NGOs. The United States and other delegations periodically held briefing sessions for NGOs in this room, and so-called "brainstorming sessions" were held continually throughout the course of the meeting. Some sessions focused on NGO concerns regarding the official meeting, while others were informative sessions, focusing on specific ethnic issues, including the existence of a Macedonian nationality, the Yugoslav military attack on Slovenia, and Muslims in the Soviet Union. A well-attended seminar on the situation of Roma in Europe was also held during the course of the meeting. In addition to the brainstorming sessions, NGOs met with individual delegations to press their main issues of concern.

One last positive step which made the Geneva meeting the most open of any CSCE meeting held to date was the existence of boxes for delegations where NGO's could leave materials expressing their concerns. These boxes permitted prepared materials to be circulated to delegates without having to request Secretariat

assistance, sending them through the mail or having to contact a delegate directly.

Near the end of the Geneva meeting, the NGO's released an 11 point memorandum calling for enhanced NGO participation at CSCE meetings in light of the Paris Charter which said that "[t]hese organizations groups and individuals must be involved in an appropriate way in the activities of the CSCE in order to fulfill their important tasks" Among their proposals were: adequate seating in the meeting hall, a separate NGO room like that available in Geneva, and the right of NGO's to organize parallel or alternative meetings, to hold press conferences in or near the conference center and to attend sessions of subsidiary working bodies.

### Conclusions

The Geneva Experts Meeting on National Minorities was neither an amazing success nor a dismal failure. The picture is positive on the whole, especially given the sensitivity of the topic, but mixed in regard to the various aspects of the meeting.

For example, the discussion among the delegations was somewhat restrained. There were good presentations by various delegations on their own governments approaches to national minority questions, but there was little actual dialogue on the various approaches presented. Moreover the implementation review was, with the exception of statements by the United States, and one or two other delegations, clearly marked by an unfortunate hesitance to engage in a frank exchange of views.

The report adopted at the end of the meeting is, in many respects a modest achievement. The commitments it contains do not retreat from earlier commitments made in the CSCE, but the extent to which they advance them is marginal at best. Given the clear possibility which existed in Geneva for a document that would have done more harm than good, however, the damage-control exercise which resulted in the report that was adopted could be considered a success in itself. Moreover, considering the tensions apparent among certain delegations over minority



concerns and their own expectations, failure to reach consensus on a document in Geneva might actually have aggravated an already difficult situation in some parts of Europe. Instead, each delegation left Geneva knowing that there still was some common ground on minority issues and that further dialogue on these issues had not been futile.

Nevertheless, the trend of adopting lengthy new documents which was continued by the Geneva meeting is a cause for concern. Focusing on new words, especially at short, inter-sessional CSCE meetings, detracts from the ability to have a real dialogue on the topic being addressed by the meeting. As the excessive printing of money leads to inflation, the adoption of more and more documents in CSCE can lead to a form of "word-inflation" that dilutes the political value of previously agreed commitments.

More positive developments occurred in the sphere of NGO access and activities during the course of the meeting. In many respects, the work of NGOs may have been more productive than the official meeting in directly addressing and debating specific minority issues of concern. The treatment of NGOs and private visitors by the Swiss hosts provided many useful precedents that can be used to involve them further in the inter-governmental process.

The Geneva meeting focused attention on what is an extremely timely and critical area for cooperation in CSCE. The outcome for the meeting reflected the clear sensitivities that make such cooperation difficult. When viewed in the longer term and on a more abstract basis, the principal contribution of the Geneva meeting may be the extent to which it represented a first and real step in an attempt to overcome these difficulties and sensitivities, making progress at future meetings possible and improved implementation of commitments by the participating States a reality. In this respect, the results of future meetings and, more importantly, the respect shown by States for the rights of persons belonging to national minorities will reveal the true level of success of the Geneva meeting.

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## **THE MOSCOW MEETING OF THE CONFERENCE ON THE HUMAN DIMENSION**

### **Summary**

In accordance with the mandate of the Vienna Concluding Document, the 38 states participating in the Conference on Security and Cooperation in Europe (CSCE) met in Moscow from September 10 through October 4, 1991, for the third meeting of the Conference on the Human Dimension (CHD, or CDH from the French) of the CSCE. The first meeting of the Conference was held in Paris from May 30 through June 23, 1989, and the second was held in Copenhagen from June 5 through 29, 1990. The meetings of the CHD address the full range of human rights and humanitarian concerns associated with the Helsinki process.

The main elements of the meeting are summarized below:

***Participants:*** The Moscow Meeting was the first CDH meeting in which Albania, which had become a member of the CSCE in June 1991, participated fully. Also, Estonia, Latvia, and Lithuania were admitted to the CSCE on the first day of the Moscow Meeting and participated in it.

A Foreign Ministers' Meeting was held to admit the Baltic States to the CSCE immediately prior to the opening of the Moscow Meeting. Secretary of State James A. Baker missed the special meeting and the opening of the Moscow Meeting but attended the following day to give the United States' opening statement. The U.S. delegation was led by Ambassador Max Kampelman, who had previously distinguished himself as head of the U.S. delegations to the Copenhagen Meeting of the CDH (1990) and the Madrid Follow-Up Meeting (1980-83.)

***Commission Involvement:*** The Helsinki Commission played an active role in preparations for the meeting, contributing to the development of positions and managing work with American NGOs planning to attend. Chairman Steny H. Hoyer and Co-Chairman Dennis DeConcini led a congressional delegation to Moscow for the opening of the meeting. Commission Staff

Director Sam Wise and Senior Adviser David Evans served as Deputy Heads of Delegation, and Commission staff served as delegation members participating in all aspects of the meeting.

**NGO Activities:** Representatives of numerous non-governmental organizations from the United States, the Soviet Union, and other participating States attended the Moscow Meeting. For the first time, the number of Soviet NGOs and private citizens participating was overwhelming. In addition to attending plenary sessions and meeting with delegations, NGOs participated in parallel activities sponsored by the Soviet committee set up for the Meeting, but also organized their own press conferences, meetings, and cultural events.

**New Directions for the CSCE:** Both in the proposals introduced (totalling 49) and in corridor discussion, a change in the direction of CSCE was evident. Delegates were concerned that the CSCE had run out of useful commitments to make; meanwhile, emphasis was turning toward social rights for groups. Strong national positions prevented the European Community and NATO from playing strong coordinating roles and raised the question of how many more commitments could usefully be made. Concerns were also expressed over CSCE's inability to deal with the crisis in Yugoslavia and the devolution of power to Soviet republics. Discussion was also held on the U.S., Polish, and Italian proposals to convert the CSCE Office for Free Elections into an Office for Democratic Institutions, an idea which gathered wide but not universal support.

**The Moscow Document:** At the end of the meeting, the Moscow Document was adopted, deepening previous CSCE commitments, strengthening the Human Dimension Mechanism, and stating categorically that human dimension issues are of international concern and not solely the internal affair of the State concerned. Highlights of the key provisions follow:

**The Human Dimension Mechanism (paragraphs 1-16)**

- The main achievement of the Moscow Meeting, the new mechanism contains a progression of steps. First, a state may request a mission of experts selected from a CSCE list to

address a human dimension issue through good offices, mediation, or other activities as needed. Other states may also request a state to invite such a panel. If that panel is not successful, or if a state refuses to invite a panel onto its territory, the mechanism provides for further mandatory steps, more intrusive and confrontational. A state may be forced to receive a mission if, a voluntary mission having failed or been refused, six CSCE states support the creation of a mission for fact-finding. In extraordinary cases, a mandatory fact-finding mission may be created immediately if ten states agree.

**Rule of Law and Democratic Institutions (paragraphs 17-31)**

New commitments address:

- the importance of open and accountable legislative processes and review of administrative decisions;
- independent judiciaries;
- regulating the conduct of law enforcement personnel;
- the rights of arrestees and detainees;
- the right to privacy from state intrusion;
- civilian control of military, paramilitary and intelligence forces;
- safeguards for independent media;
- limitations on the imposition of states of emergency and protection of human rights during states of emergency.

***Other Human Dimension Issues (paragraphs 32-43)***

New commitments address:

- easing internal travel and residence restrictions;
- the rights of migrant workers;
- facilitating humanitarian relief operations;
- non-discriminatory treatment of women;
- the rights of persons with disabilities;
- human rights education;
- the status of NGOs, and their access to CSCE states to observe implementation of CSCE commitments, as well as their access to CSCE meetings and documents.

### Background

The concept of a Conference on the Human Dimension originated during the Vienna CSCE Follow-Up Meeting (November 1986 - January 1989). During the negotiations, Western countries--particularly Canada, Denmark, France, the Netherlands, the United Kingdom, and the United States--sought to elevate the status of human rights and other humanitarian issues within the CSCE. The desire for greater focus on human rights was in response both to the increased prominence and likely success of military security negotiations in CSCE, which threatened to upset a balance between security and human rights that has become a fundamental characteristic of CSCE; and because Soviet and East European observance of CSCE human rights commitments, although improved, continued to fall below CSCE standards.

A proposal by the member states of the European Community was therefore supported by the NATO countries and later adopted foreseeing the creation of a conference on "the human dimension of the CSCE" which would meet annually, three times between the Vienna Meeting and the next main follow-up meeting in Helsinki in 1992. The specific subject matter of the human dimension was defined as the relevant Basket I Principles and Basket III issues (encompassing human rights and humanitarian concerns.)

Difficult negotiations followed over the sites for the three conferences. Although the Eastern countries did not display much interest in such a conference, the Soviet Union had early in the Vienna Meeting tabled a proposal for a Conference on Humanitarian Cooperation, to be held in Moscow and omitting consideration of issues relating to the Principles.

At length, a compromise was reached setting the meetings for Paris in 1989, Copenhagen in 1990, and Moscow in 1991. The United States and the United Kingdom made their attendance at Moscow contingent on continued improvement in the human rights situation in the Soviet Union, particularly in the issuance of exit visas.

The Paris Meeting, coming so soon after the close of the Vienna Follow-Up Meeting, did not adopt a concluding document.

However, progress and problems in implementation were reviewed, and numerous proposals were introduced, setting the stage for the conferences to follow.

In Copenhagen, on the other hand, the time was right for a major step forward. The Copenhagen Document, with its emphasis on human rights and freedoms, and a virtual "how-to" for a state governed by the rule of law, has been recognized by all the participating States as a seminal document.

As the Moscow Meeting approached, the United Kingdom formally lifted its reservation on attending the meeting, citing general improvement in the human rights situation and the passage of an imperfect but much-improved law on entry and exit. The United States, without a formal announcement, proceeded with plans for the meeting.

The coup attempt in the Soviet Union on August 19, 1991, and its aftermath changed the situation considerably. The United States indicated that it would not attend the meeting if the coup held; however, when the coup failed, the Soviet and Russian Governments agreed to organize the meeting and control the delegation jointly. The United States and others then agreed to attend.

#### Organization of the Meeting

The agenda for all three of the CDH meetings was laid out in the Vienna Concluding Document. It consists of:

- 1) Opening Statements;
- 2) A review of implementation of CSCE commitments;
- 3) A discussion of the human dimension mechanism (see section VII below) in both plenary sessions and Subsidiary Working Body A (SWB A);

- 4) The introduction and consideration of proposals in plenary sessions and in Subsidiary Working Body B (SWB B);
- 5) Concluding statements.

As with all non-military CSCE meetings mandated by the Vienna Concluding Document, the plenary sessions of the CDH were open to the public. The Soviet Government, as host of the Moscow Meeting, was responsible for ensuring that access to and openness of the meeting for private citizens and representatives of non-governmental organizations, or as members of the press were in accordance with the commitments contained in Annex XI of the Vienna Concluding Document and the Chairman's Statement attached to the Document of the Copenhagen Meeting of the CDH. Concern that the Soviet hosts would not live up to their commitments regarding openness and access was high prior to the Moscow Meeting, in part because the Soviet Government has not had a tradition of openness to non-governmental groups and individuals, much less free access to meetings of foreign officials. (For discussion of openness and access at Moscow, see sections on NGOs and "The Meeting.")

#### U.S. Objectives for the Meeting

The United States was concerned that the meeting be held in accordance with the Vienna Concluding Document and Copenhagen standards of openness and access to non-governmental groups and individuals, in light of past Soviet mistreatment of NGOs and of insufficiencies as the Soviets prepared for the meeting.

Within the meeting, the United States wanted to ensure a full and frank review of implementation. A lackluster implementation review at the Geneva Meeting on National Minorities, which had taken place in July 1991, fueled concerns that the desire to commend the states of Central and Eastern Europe and the Soviet Union for the progress they had made was inhibiting discussion of ongoing deficiencies in implementation. The United States felt that the drive to adopt new commitments and the need to



acknowledge progress fully should not be allowed to supersede discussion of continuing or new problems, such as the resurgence of ethnic hatred.

The most important objective put forward by the United States was that the outcome of the meeting include a strengthening of the human dimension mechanism, based on a proposal the United States had put forward at Geneva. The proposal called for a procedure allowing a country to invite in a CSCE good offices mission to assist in the resolution of a problem relating to the human dimension.

The United States was interested in other steps forward from the Copenhagen Document, particularly in the area of the rule of law, if they could be achieved. In the face of pressure to repeat or step back from Copenhagen commitments, however, the United States took the position "above all, do no harm."

#### U.S. Delegation to the Meeting

The U.S. delegation was headed by Ambassador Max M. Kampelman, who had previously served as U.S. head of delegation to the Madrid CSCE Follow-Up Meeting (1980-83); the Copenhagen Meeting of the CDH (1990) and the Geneva CSCE Meeting on National Minorities (1991).

Although he was not present for the extraordinary meeting of foreign ministers which admitted the Baltic States to the CSCE on Tuesday, September 10, Secretary of State James A. Baker attended the conference on Wednesday, September 11 and delivered the U.S. opening statement.

Thirteen U.S. citizens were appointed as public members of the delegation. The public members provided the delegation with valuable expertise in the subjects under discussion in Moscow as well as personal contacts with non-governmental organizations, particularly groups of Soviet citizens concerned with the Moscow Meeting. The public members were:

- Shoshana Cardin, Chair, Conference of Presidents of Major Jewish-American Organizations; National Conference on Soviet Jewry;
- Cathy Fitzpatrick, SOROS Foundation;
- Professor Richard Gardner, Columbia University School of Law;
- Adrian Karatnycky, Adviser to the President, AFL-CIO;
- The Reverend Leonid Kishkovsky, President, National Council of Churches;
- Van Krikorian, Director, Government Relations, Armenian Assembly of America;
- The Most Reverend Theodore McCarrick, Archbishop of Newark;
- Robert McConnell, Vice President, Coordinating Committee in Support of Ukraine;
- Jane Olson, Helsinki Watch;
- Jerome Shestak, former U.S. Representative to the U.N. Commission on Human Rights;
- Rudi Unterthiner, President, National Italian American Foundation;
- Allen Weinstein, President, Center for the Study of Democratic Institutions;
- Stanley Zax, President and Chairman of the Board, Zenith National Insurance Corporation.

#### **Congressional Participation in the Meeting**

Helsinki Commission Chairman Steny H. Hoyer (D-MD) and Co-Chairman Dennis DeConcini (D-AZ) led a delegation to the opening of the Moscow CDH Meeting. Members of the delegation included Helsinki Commissioners Ed Feighan (D-OH) and the Senior Adviser to the Secretary of Commerce, William Fritts. Other participants were Representatives Ben Gilman (R-NY), Dan Glickman (D-KS), Jan Meyers (R-KS), Tom Sawyer (D-OH), David Skaggs (D-CO), Louise Slaughter (D-NY), Ben Jones (D-GA), Greg Laughlin (D-TX), Curt Weldon (R-PA), and Sander Levin (D-MI).

The delegation attended the opening session of the Conference, highlighted by President Gorbachev's address. In addition,

delegation members met with U.S. head of delegation Ambassador Max Kampelman, Soviet co-head of delegation Sergei Kovalev, the Executive Secretary of the Moscow Meeting, Soviet First Deputy Foreign Minister Vladimir Petrovsky, Soviet Defense Minister Evgeniy Shaposhnikov, and Russian Foreign Minister Andrei Kozyrev and attended a reception given by the Armenian Permanent Representative in Moscow in honor of the opening of the conference. The delegation had previously discussed CSCE issues with governmental and non-governmental organizations in the Baltic states, Georgia, and Armenia.

Helsinki Commission staff remained throughout the meeting, playing key roles in all aspects of the work of the delegation.

#### NGO Attendance and Activities

A variety of non-governmental organizations (NGOs) from the United States and other participating States were represented at the Moscow Meeting, reflecting their continued interest in the CSCE and its potential to address a wide variety of issues.

Although some interested individuals complained of difficulties in gaining access to the meeting site, this seemed to reflect misunderstandings and breakdowns in communications rather than a deliberately obstructionist policy. Overall, NGO facilities and access at the meeting site were adequate and the Executive Secretariat was helpful.

As at previous CDH meetings, all plenary sessions of the Moscow Meeting were open to the public. With the exception of the opening day, when President Gorbachev spoke, seating was ample for NGO representatives, visitors, and the press.

NGOs used the opportunity of the plenary sessions to meet with delegations and distribute information. The U.S. delegation assisted NGOs in entering the meeting site when necessary, briefed them on the activities of the meeting, listened to their concerns, suggested others with whom to discuss their concerns, and helped them organize activities such as press conferences. Some NGOs complained that their written materials for distribution had been lost by the Soviet organizers, or that their distribution had been

impeded. U.S. delegation members helped representatives of NGOs deliver information to delegation mailboxes.

U.S. NGOs attending included representatives of general human rights, human dimension and religious groups as well as Soviet Jewry, Baltic, Ukrainian, Armenian and Russian organizations. Other Western groups interested in human dimension issues attended, as well as representatives of many European ethnic groups such as Roma (Gypsies) and Macedonians. A range of issues and concerns was raised by NGOs from all participating States; however, the emphasis tended to fall on the situation in the republics of the Soviet Union.

Adding a new element to the character of NGO representation at CDH meetings was the preponderance among the attendees of NGOs and individuals from the Soviet Union and its republics. Many came to press the cause of self-determination and independence for various republics and autonomous regions, or to protest violations of human rights of minorities within republics such as the Gagauz and Russians in Moldavia and the Ossetians in Georgia.

Interest in using CSCE mechanisms and procedures to address human rights problems in the USSR was high--Ukrainian miners as well as a Gagauz minority group proposed that monitoring or good offices missions be created to address their concerns. All-Union groups, such as the Moscow Helsinki Group, All-Union Memorial Society Human Rights Office, and Sakharov Organizing Committee Moscow Tribune, expressed their conviction that a constant, institutionalized foreign NGO presence throughout the Soviet Union is essential for the defense of human rights in the absence of binding legislation. NGOs consistently asserted that the existing Soviet Government cannot protect human rights, and they hoped that respected foreign groups could fill that role. Some Soviet NGOs worked closely with the Soviet delegation to introduce proposals (see "The Meeting--Other Proposals" for discussion of NGO commitments in the document).

Other issues raised ranged from discrimination against Communists to rights of persons with disabilities to continuing human

rights violations regarding alleged political prisoners and emigration restrictions.

Reflecting changing times, some Soviet NGOs warned against other Soviet NGOs. For example, the Russian Anti-Fascist Center stressed the alarming publications and activities of anti-Semitic organizations and complained of the failure of Soviet and Russian authorities to take judicial action against groups seeking to instigate inter-ethnic hatred.

Many individual Soviet citizens also attended, seeking help in redressing grievances against the Soviet system after decades of lawlessness and arbitrary administration of justice. Complaints ranged from unjustified loss of employment and placement in psychiatric hospitals to subjection to space-based rays launched and maintained by Soviet security organs. The U.S. delegation was able to do little more than listen to these individuals and forward their complaints to the Soviet delegation or the relevant republican authorities, suggesting to the Soviet delegation that it address the problems of these individuals.

In addition to their activities at the meeting, many NGOs from the Soviet Union and the West organized events, press conferences, seminars, and receptions. Others participated in the Soviet-sponsored parallel activities, which included a Chatauqua conference on the human dimension, a conference on minority refugees in CSCE states, a Quaker-sponsored roundtable on problems of national service, a conference on issues surrounding free media, and an Amnesty International workshop on the death penalty. Perhaps one of the most notable NGO-related events, and one indicative of changed Soviet attitudes toward NGOs, was the first-time ever meeting of National Council of Soviet Jewry leaders with President Gorbachev.

While NGO access to and involvement in the Moscow Meeting surpassed expectations, the numbers of NGOs attending fell far short of the Soviet expectations of 15,000. In response to concerns of those NGOs present, as well as some governments, an expanded or radically different role for NGOs in the future work of the human dimension was discussed. In addition to the

expansion of NGO rights and expression of their concerns in the Moscow Document, some continued to press for the Soviet ideas regarding formalized NGO monitoring, broadening NGO participation in meetings or granting NGOs official status in the CSCE, along UN lines. However, many states remain completely opposed to any change in the status of NGOs, and the issue is sure to be discussed extensively at the Helsinki Follow-Up Meeting.

### **The Meeting**

#### ***Admission of the Baltic States***

In the aftermath of the August coup attempt, the United States and most other CSCE participating States recognized the independence of the three Baltic States--Estonia, Latvia, and Lithuania--which had been striving for independence since their annexation by the Soviet Union in 1940. Willingness to admit the Baltic States to the CSCE, which the Commission had urged, developed into a consensus in the weeks prior to the opening of the Moscow Meeting. An extraordinary meeting of the CSCE Council of Foreign Ministers was convened under the chairmanship of German Foreign Minister Hans-Dietrich Genscher just prior to the opening of the conference. The decision to admit the three states was taken in accordance with paragraph 54 of the Helsinki "Blue Book" of procedure, which allows for the participation of all European states. Estonia, Latvia, and Lithuania, whose efforts to gain CSCE observer status had been consistently denied since the Copenhagen Meeting, were seated as full members at the opening of the Moscow Conference.

#### ***The Opening***

The Moscow Meeting was held in the House of Unions in central Moscow. Its Hall of Columns, where plenary meetings were held, had previously been used for the show trials of the 1930s (and later, the trial of U-2 pilot Francis Gary Powers) and for the lying-in-state of Andrei Sakharov as well as Soviet leaders until Leonid Brezhnev.

The opening was attended by foreign ministers of most of the 38 participating States (although not Secretary of State James Baker, who arrived the following day to give the United States

opening statement), Soviet President Mikhail Gorbachev, and such luminaries of the Soviet human rights movement as Yelena Bonner, Yuri Orlov, Gleb Yakunin, and Sergei Kovalyev, present in his capacity as the RSFSR-nominated co-head of the Soviet delegation.

President Gorbachev's opening statement reviewed recent events in his country and the important role of the international community in ensuring the triumph of democracy. Admitting that he personally had made mistakes leading up to the coup, Gorbachev called for swifter reform within the Soviet Union and greater support from without. Human rights, he admitted, were not respected everywhere within the Soviet Union, particularly the rights of minority groups. He called on the CSCE to take further measures on freedom of information and demilitarization, and to resist playing into the hands of "reactionaries, separatists and nationalists."

Other delegations' speeches focused on the uncertain situation in the Soviet Union and the importance of protecting human rights, particularly those of minorities, during the transition. The tragic violence in Yugoslavia was also commented upon by many delegations. Another issue often mentioned was the growing number of refugees in Europe and the potentially explosive nature of the refugee problem.

Many delegations called for the strengthening of the human dimension mechanism, and some joined a Netherlands/European Community call for closer links between the CSCE and the Council of Europe. The most specific--and revolutionary--proposals came in the speech of German Foreign Minister Hans-Dietrich Genscher. Calling for CSCE sanctions for countries violating CSCE commitments, Genscher proposed not only mandatory observers under the human dimension mechanism, but agreement that 37 CSCE participating States could "isolate" and take measures against a participating State in serious violation of its CSCE commitments without its consensus. (See discussion of the German ideas below.)

#### ***Review of Implementation***

In contrast to the lackluster discussion a month earlier at the Geneva Meeting on National Minorities, delegations in Moscow were willing to point out shortcomings as well as progress in fulfillment of human rights commitments. Notably, perhaps the single most critical statement given was a self-criticism presented by Soviet co-head of delegation Sergei Kovalyev, a former political prisoner now chairing the RSFSR Supreme Soviet Human Rights Committee.

Kovalyev, amplifying earlier criticisms and promises of improvement made in the opening statements of Soviet President Gorbachev and Foreign Minister Pankin, said further improvement was necessary concerning exit visa regulations, internal passports, psychiatry, independent judiciary, capital punishment, prison conditions, and political prisoners. Moreover, the central government must cease actions violating the sovereignty of the republics, he said, citing the January 1991 violence in Lithuania and Latvia as a violation still requiring explanation to the international community. At the same time, he cited human rights violations in the republics and called for the responsibility for human rights to be moved from the national to the international arena.

His speech did not dissuade the United States and other delegations from reviewing their concerns with continuing Soviet shortcomings, particularly regarding long-term refuseniks, and human rights situations in the republics. The Georgian Government under President Gamsakhurdia was singled out for particular criticism for "restrictions on fundamental freedoms, even of the local Georgian population, [that] runs (sic) contrary to all that we aspired to achieve in signing the Charter of Paris." Many delegations also decried the violence against Armenians perpetrated by Azeri and Soviet forces. At one point, the Czechoslovak delegation indicated that it had invited the Armenian Supreme Soviet Human Rights and Nationalities Committee Chairman to address a CDH plenary, in order to provide balance to an Azeri speech given from the Soviet delegation. However, the Czechoslovaks concluded that this was not a proper use of guest status, and the address did not take place.



Considerable discussion of the situation in Yugoslavia took place, but the meeting was pervaded with a feeling of impotence at its inability to influence the tragic events there. The United States echoed Pope John Paul II by characterizing the civil war as "not worthy of the human race, not worthy of Europe," but it and others also raised the plight of ethnic Albanians in Kosovo. Problems of various Balkan minorities were reviewed at length by the delegations of the region; Bulgaria was criticized repeatedly for its refusal to register ethnically based political parties; and continuing substandard treatment of minorities in Romania was remarked on. Turkey's treatment of Kurds and of detainees was condemned by several neutral and Western delegations, with the United States criticizing Turkey in a CSCE statement for the first time. In its speeches, the U.S. delegation also highlighted the importance of free media and free elections in the development of democratic societies.

A further development in implementation review came with the Soviet announcement that internal travel restrictions would not apply to conference participants. A group of U.S., Dutch, and Swedish diplomats tested this announcement by traveling to the infamous Perm-35 labor camp and two Soviet prisons. They were able to see remaining Soviet political prisoners, and a Dutch delegate actually accompanied back to Moscow five who were pardoned as political prisoners by RSFSR President Boris Yeltsin during the meeting: Alexander Goldovich, Anatoli Khobta, Viktor Olisnevich, Alexei Shcherbakov, and Valery Yanin. However, delegations were disappointed that other Soviet promises to review refusenik cases and general emigration policy during the course of the meeting were not taken up. Disturbingly, no action has been taken on those prisoners under Soviet rather than RSFSR jurisdiction, who can be freed only by Gorbachev, or on the remaining refusenik cases, two months after the start of the meeting.

Overall, the implementation review was not stunted but had a certain sterile quality. Delegations saw that some human rights violations persisted, while new ones were appearing across Europe, largely connected with ethnic and racial hatred. However, the implementation review yielded little sense of increased national willingness to address problem areas or of progress in the interna-

tional search for solutions. Notably, the Human Dimension Mechanism, which had been created at the Vienna Follow-Up Meeting to allow any participating State to raise instances of non-compliance with any other state at any time, with the other state committed to respond, had been used in only three situations since the Copenhagen Meeting, a marked decrease. Approximately 26 delegations had used it in response to the January 1991 Soviet-sponsored violence in Lithuania and Latvia, over 14 had used it in response to Serbian actions in Kosovo, and a few delegations had invoked it in response to violence against Armenians in Nagorno-Karabakh. Much attention was devoted to strengthening the mechanism (see below for more detailed discussion), but its use was not a focal point of implementation review. Many felt that a new approach to implementation review would be needed in future.

#### *New Directions for the CSCE*

Coming only 6 months before the opening of the Helsinki Follow-Up Meeting, the Moscow Meeting was a forum for early thoughts on what major changes and developments the CSCE would need in order to function effectively in the post-Cold War, post-Communism Europe. The meeting's Moscow location could not have been more apt; not only were delegates constantly reminded of the new situation in which the August coup attempt and its aftermath had placed all of the CSCE, but they were also confronted daily with the uncertainty of the future: a disintegrating center, increasingly sovereign republics, calls for independence, local determination to exercise sovereignty including foreign and defense policy.

The growth of republic autonomy in the Soviet Union, together with the emergence of quasi-independent entities in Yugoslavia, proved to be an issue the CSCE was not ready to confront. British and German efforts to introduce language committing "sub-national entities" to CSCE principles and standards in the field of human rights were rejected by other states skittish at the prospect of acknowledging such entities in international documents, much less the "emerging states" that the Germans had initially proposed to discuss.

The emerging states made themselves known, however: both Armenia and Georgia requested observer status during the course of the meeting. The Georgian request was handed to the Irish chairman of the next plenary, who determined informally that consensus for Georgian observer status did not exist and merely noted the request and lack of consensus in the journal of the day. Clearly, many delegations were concerned about the human rights situation in Georgia as well as the larger question of republic relationships to the CSCE. An Armenian request at the conclusion of the meeting was not acted upon. In both cases, the Soviet delegation supported the requests of the republics, saying that closer association with the CSCE could only improve the republics' observation of CSCE commitments. However, the Soviets had refused a Ukrainian request, made prior to the meeting, for participating state status. Ukraine then declined a seat on the Soviet delegation.

With the CSCE having grown by three states since the previous CDH (Albania, Estonia, Latvia, and Lithuania joined; the German Democratic Republic unified with the Federal Republic of Germany), and other aspirant states lining up, U.S. head of delegation Max Kampelman wondered whether "further additions [would] produce a change of chemistry, a change of approach, a possible change of spirit and perhaps of dedication."

Precisely these considerations, along with concern that the CSCE had not been able to do more to stop the violence in Yugoslavia and to react to the coup attempt in the Soviet Union, led German Foreign Minister Genscher to propose an ambitious new direction for the CSCE. Germany stated in speeches and a "food-for-thought" proposal that human rights were clearly an area of international concern; if this were the case, serious violations of Helsinki principles by a participating state should entitle the other participating States to isolate the offender and take whatever measures they chose, without the offending state's consensus, to return it to compliance.

Although this proposal would be a radical shift for the CSCE away from consensus decisions and a role in bringing countries together and forging joint positions rather than a tool for isolation

and punishment, it drew surprising support from delegations in Moscow. Co-sponsors of the proposal included the Soviet Union, Austria, Ireland, Luxembourg, the Netherlands, and Bulgaria, with support coming from the other new democracies. Realizing that their "modest proposal" would not gain consensus on its first appearance, Germany settled for reaffirmation that human dimension commitments are "matters of direct and legitimate concern to all participating States and do not belong exclusively to the internal affairs of the State concerned," in the opening section of the Moscow Document. But, given continuing frustration with the lack of progress in the conflict in Yugoslavia and concern with CSCE's growing unwieldiness, the proposal is certain to reemerge. Although the United States did not support the German proposal, Ambassador Kampelman indicated in his closing statement that "we should continue the search for a method, to be initially established by consensus, under which serious breaches of behavior and commitment can be met by the CSCE community without fear of a veto by the state responsible for the severe breach of CSCE standards."

Papers were also tabled and informally discussed in Moscow on transforming the CSCE Office for Free Elections into an Office for Democratic Institutions. One of Secretary Baker's initiatives, this idea had gained considerable support and will be further discussed at the Oslo Meeting on Democratic Institutions and by the Committee of Senior Officials. The delegations of member states of the European Community and some other European delegations, particularly Sweden, continued to push for closer CSCE ties to the Council of Europe, to which the United States does not belong. The United States could not agree with these proposals, but many states would like to see the Council of Europe be the body charged with implementing CSCE standards in the human rights area.

The future of the CDH itself was unclear at the end of the conference. No concrete proposals were tabled, but some delegations seemed to feel that regular CDH meetings should continue, while others pressed for greater institutionalization of the CDH process, even to the establishment of a standing committee.

### *Negotiation of the Final Document*

Delegations came to Moscow determined to have a final document to mark the holding of a meeting in Moscow. After the difficult July meeting on national minorities, there was general agreement that the first task of Moscow was to provide the CSCE with a tool to better monitor and enforce human rights, particularly the rights of persons belonging to national minorities. To accomplish this, delegations envisioned strengthening CSCE's Human Dimension Mechanism (see below). Work began immediately in Moscow on this and other proposals carried over from the Geneva meeting. At the same time, ideas and non-papers were circulated on other issues which delegations wanted to be considered, or expanded from their coverage in the Copenhagen Document.

After 2 weeks, proposals were divided into three groups--human dimension mechanism proposals, rule of law/democratic institutions, and miscellaneous. Austrian, Norwegian, and Soviet coordinators were chosen to direct the drafting work.

### Human Dimension Mechanism

The original human dimension mechanism is a set of commitments made in the concluding document of the Vienna Follow-Up Meeting (1986-9). The Copenhagen Meeting of the CDH refined the Vienna provisions. The two documents commit each of the participating States:

1. to respond in writing within 4 weeks to requests for information and to representations from any other participating State on specific cases or situations relating to commitments in the human dimension of the CSCE;
2. to meet bilaterally, as soon as possible but as a rule within 3 weeks, with participating States requesting such a meeting to examine these cases or situations;
3. to bring, if it is deemed necessary, these cases and situations to the attention of the other participating States; and

4. to provide, if it is deemed necessary, at the three meetings of the CDH as well as CSCE follow-up meetings, information on what has transpired under paragraphs 1 and 2 above.

Already at the Paris meeting of the CDH in 1989, delegations tried to enhance the mechanism. Further efforts at the Copenhagen CDH in 1990 and the Geneva CSCE Meeting on National Minorities in 1991 had also been unsuccessful, partly because delegations did not see the utility of or were unwilling to subject themselves to a stronger mechanism, but also because some delegations had such strong national ideas of what the enhanced mechanism should be that they were unable to compromise.

By Moscow, however, the perception that the CSCE needed to move from just setting standards to enforcing their implementation had created a clear role for an enhanced mechanism, particularly as a tool to address the problems of national minorities and to put pressure on governments with poor human rights records. The failed Moscow coup, followed by Soviet eagerness to "create international guarantees for implementing the primacy of democracy and human rights," as Soviet co-head of delegation Yuri Deryabin put it in his closing statement, was added to frustration with continued violations of basic human rights in Yugoslavia. The resulting pressure made enhancement of the Mechanism the sine qua non for the Moscow Meeting.

The relatively few uses of the mechanism in the year between the Copenhagen and Moscow meetings was seen as a further indication that development of the mechanism was needed. In Moscow, a long-standing proposal of the neutral and non-aligned countries for human rights observers, to be sent quickly and without right of refusal (analogous to the challenge inspection provided for in the confidence- and security-building agreements of CSCE's military security basket) was merged with an Austrian proposal for rapporteurs, who could go into a country and assess a case or situation for the CSCE.

The European Community worked along similar lines at Moscow, but used the term fact-finding, rather than observe or report. The EC proposal also envisaged that a number of states, rather than one alone, would have to support a fact-finding mission for it to take place. A Netherlands proposal supported by most EC countries set out extensive modalities for this approach.

The United States came to the meeting with a different approach, envisioning a mechanism providing the good offices of CSCE experts for states that recognized their problems and wanted some help addressing them. Eventually adopted as the first stage of the Moscow Mechanism, the U.S. proposal permits a state to request that a panel be established from a list of experts nominated by all participating States. The panel would then enter the requesting State and be free to investigate and take whatever actions it thought desirable to further dialogue and resolution of the situation for which it had been formed.

The next stages of the mechanism as agreed in Moscow are incrementally more intrusive and mandatory. If a good offices mission is unsuccessful, or if another state is unsuccessful in its efforts to convince a state to request such a panel for itself, one state seconded by five others may send a fact-finding mission to the state. In cases of "particularly serious threat to the fulfillment of the provisions of the CSCE human dimension," one state seconded by nine others may send a fact-finding mission immediately, without going through the good offices phase first.

#### Rule of Law and Democratic Institutions

In Moscow, it was often suggested that this vein of proposals had been mined out in Copenhagen. Indeed, the proposals adopted in this area were marginal advances over previous meetings. It was obvious that, because of differing national systems and particular national concerns, some delegations--not necessarily the newest democracies--were unwilling to go further in this area. Valuable concepts of administrative law, independent judiciary, freedom of expression, restrictions on states of emergency, and civilian control of military and security forces were watered down in wordsmithing exercises. But, the Moscow Document does

contain new CSCE commitments in all the above areas as well as on the right to privacy and the rights of arrestees.

#### Miscellaneous Proposals

The breadth of issues dealt with in this group was perhaps its most remarkable feature. For the first time, CSCE addressed itself in detail to the rights of women and persons with disabilities--a development heralded by some and decried as a descent to special interest groups and secondary issues by others. (Language on indigenous persons did not find consensus; the rights of homosexuals, while raised in plenary by several delegations, also did not find their way into the text.) The discussion of these issues seemed to herald a shift from the political and civil to the socio-economic aspect of human rights.

The problems of persons belonging to national minorities were raised in this group as well, but coming so soon after the Geneva meeting devoted to the issue, little progress seemed possible. Migrant workers, however, received promises of a "focused discussion," by which sponsoring delegations understood a post-Helsinki seminar. In these areas, as well as capital punishment and others, language repeating or varying the Copenhagen Document was adopted more to indicate that the issue had been raised than to indicate any substantive progress or commitment.

The role of non-governmental organizations (NGOs) in the CSCE was extensively discussed. Several proposals were made in the attempt to give NGOs, or certain NGOs, particular status at the CSCE or to give NGOs specific duties in the implementation and review of implementation of CSCE commitments. These proposals included the creation of NGO monitoring points in each participating State (USSR), giving certain NGOs status as is done by the United Nations (Poland), and mandating the creation of a governmental body to interact with NGOs (Norway). The Soviet Union was among the strongest supporters of these proposals, arguing that institutionalization of NGOs was one way to deal with continuing human rights problems throughout the republics and the threat of future large-scale abuses, such as had taken place in the past, by creating an "early warning system" on the international level.



The prevailing approach, however, was based on a U.S. proposal which sought to increase NGO freedom to observe and interact with CSCE governments as NGOs saw fit, rather than cast them into an institutionalized and possibly limiting role and status. The proposal also aimed to put in writing some of the higher standards for NGO access to CSCE meetings which had been established at Copenhagen and Geneva but not observed at all other recent CSCE sessions. Here again, some states were not ready to adopt this approach and the resulting agreed language fell short of the U.S. vision.

### Conclusions

The Moscow Meeting concluded Friday, October 4, 1991. In some respects, it was a success. Well-run overall despite many fears to the contrary in the months before the conference, the meeting provided a showcase for the post-coup Soviet Government and allowed the CSCE to make a physical show of support for the reform process in the Soviet Union by setting up there for 4 weeks.

Disturbingly, promises by Soviet Foreign Minister Pankin and the Russian co-head of delegation Kovalyev to review remaining refusenik cases did not bear fruit during the meeting. Indeed, at this writing no action has been taken, although the Commission delegation, the U.S. delegation to the meeting and several other delegations raised the issue and specific cases during the meeting. Given the changes across the board in the Soviet Union, and the otherwise-forthcoming attitude of Soviet participants, this inaction is inexplicable--and distressing.

The new mechanism procedures adopted open up the possibility of the CSCE playing a mediating, problem-solving role in human rights-related problems within countries, a positive step which had previously been absent. The mechanism procedures, by their intrusive and mandatory nature, also reinforce the new CSCE commitment to the internationalization of human dimension issues, and make real the commitment to make "interference in internal affairs" an excuse of the past.

Other provisions of the document also represent some progress in the areas of rule of law, treatment of NGOs within the CSCE process, the recognition of the rights of migrant workers, women and persons with disabilities, and others.

But, overall the document was cause for, if not disappointment, reflection about the future of the Human Dimension and its ability to deal with the pressing problems of the day. Complaints fell into several categories: disappointment with the inability to go further in certain areas, most notably on national minorities; a general sense that, as Ambassador Kampelman said in his closing statement, the process is "running out of words"; and the Canadian ambassador's closing comment, echoed by the Soviets and others, that discussion had proceeded "as if the meeting were unaware or indifferent or hapless about the events surrounding it."

The first problem is perhaps a symptom of the other two. In the search for more words to put on paper, delegations often fell back on rewriting commitments from Copenhagen or other CSCE or international documents. Those commitments were often already compromises; with so many meetings in such a short space of time, and beset with all the uncertainties of present-day Europe, many governments were simply unwilling to go further in controversial areas. This brings into question the CDH's further usefulness as a standard-setting body: how much more can all CSCE states agree, and to what purpose?

CSCE now has several important human rights documents, and new procedures for implementation to its credit. With a new set of difficult human dimension problems cropping up to replace those associated with the old regimes in East-Central Europe and the Soviet Union, the CSCE must find new ways to ensure that its many existing commitments are fully implemented, and that violators can be called to account. Concern with this problem has led to strong support for the German proposal to move away from the consensus rule. It is, however, an open question whether 37 states could regularly agree and implement measures which would have a positive effect on states in serious violation of their CSCE commitments, rather than drive them further into isolation.

Moreover, the CSCE has no way of dealing with so-called "emerging states," despite their centrality to many of the human dimension problems now developing in Europe. Unwillingness to address this issue on the part of many governments gave the Moscow Meeting a certain air of unreality, in light of the steady progress toward some form of independence by numerous Soviet and Yugoslav republics.

The proliferation of documents with marginally new commitments in a problem across the board in CSCE, not just in the Human Dimension. So too is the inability to make progress on the real problems facing Europe, such as the Yugoslav civil war.

A future Human Dimension, whether institutionalized in an Office for Democratic Institutions, transformed into annual meetings, or dealt with elsewhere in the CSCE, will have to address these issues. Otherwise, it risks becoming not only separated from events in Europe but irrelevant to them.

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## **REPORT ON THE OSLO SEMINAR OF EXPERTS ON DEMOCRATIC INSTITUTIONS**

### **Summary**

From November 4-15, the CSCE Seminar of Experts on Democratic Institutions met in Oslo, Norway, pursuant to a mandate contained in the 1991 Charter of Paris for a New Europe. Accordingly, experts discussed means and ways for "consolidating and strengthening viable democratic institutions."

During the course of the Seminar, participants met in three closed study groups in which they considered constitutional and electoral frameworks, as well as comparative human rights legislation. In this context, numerous experts participated in the Oslo Seminar, contributing expositions on the differences among their various democratic traditions and often describing their national experiences in these areas. In addition, contacts among experts, non-governmental organizations, and government representatives in the margins of the meeting contributed to the overall work of the Seminar.

Nevertheless, most discussions took place among Western delegates and focused on Western experiences; there was little attempt to apply the often theoretical observations of experts to the real-life dilemmas which many countries in transition face. Westerners, for their part, often seemed to expect the Eastern delegates to be able to clearly identify their needs, including specific programs that would aid in the strengthening of democratic institutions. Easterners, in turn, seemed to expect their counterparts to be able to provide them with a ready-made recipe for democracy. Neither expectation was fulfilled. This state of events was particularly regrettable given that agreement to hold such a meeting was based on a common view that Eastern Europe, the Soviet Union, and the Baltic States were at an historic crossroads and that these emerging democracies were intended to be the beneficiaries of this meeting.

In fact, the meeting as a whole seemed to have no ultimate objective for its work. As a consequence, delegations arrived in Norway without a common sense of how to direct their work,

pursuing a variety of often conflicting national goals. In the end, a final report was drafted which merely provided a superficial summary of the work of the experts. As such, the document failed to contain any new substantive commitments; failed to reflect the complexity and sophistication of many of the experts' interventions; and failed to elaborate or coordinate concrete democracy-building programs that might be pursued jointly or separately by the CSCE participating States. Although this report was not adopted by the CSCE participating States, agreement was reached to forward the report to the next meeting of the CSCE Council of Foreign Ministers, scheduled to meet in January 1992.

#### **U.S. Delegation to the Meeting**

The U.S. delegation to the meeting was headed by Richard Schifter, Assistant Secretary of State for Human Rights and Humanitarian Affairs and its representative on the Helsinki Commission. Mr. J. Sherwood McGinnis, from the Bureau of European and Canadian Affairs, served as Principal Deputy Head of Delegation; Deputy Assistant Secretary of State for Human Rights and Humanitarian Affairs Nancy Ely-Raphel and Mr. David Evans, the Helsinki Commission's Senior Advisor for Soviet and East European Affairs, served as Deputy Heads of Delegation. Other members of the delegation included Ambassador J. Kenneth Blackwell, U.S. Representative to the United Nations Human Rights Committee.

In line with past meetings of the CSCE, the U.S. delegation also included several Public Members--prominent individuals with expertise in the subject matter of the particular meeting. The presence of these individuals, who contributed to both the formal and informal work of the meeting, underscores the importance of democratic institution building to both the U.S. Government and the American people. The Public Members in Oslo were:

- Thomas Buergenthal, Lobingier Professor of Comparative and International Law at George Washington University and Judge on the Inter-American Court of Human Rights;
- John Elliott, Senior principal, Baskin, Flaherty, Elliott & Mannino, P.C. (Philadelphia); and

- Elspeth Rostow, Professor of Government and Stiles Professor Emeritus in American Studies at the University of Texas and Acting Chairman of the United States Institute of Peace.

#### **Commission Participation**

Representative Steny H. Hoyer (D-MD), Chairman of the Helsinki Commission, led a Congressional delegation to the Oslo Seminar. He was joined by Representatives Glenn M. Anderson (D-CA), Martin Olav Sabo (D-MN), Helen Delich Bentley (R-MD), Ben Jones (D-GA), Collin C. Peterson (D-MN), and Commissioner William Fritts (Department of Commerce). During the visit, the delegation held bilateral meetings with the Turkish and Yugoslav delegations; with parliamentarians from the Council of Europe; and with Norwegian Prime Minister Gro Harlem Brundtland as well as other Norwegian officials from the Ministry of Foreign Affairs and the Norwegian parliament.

In addition, the delegation attended an open house at the Norwegian Institute for Human Rights, the primary organizer of the parallel activities for non-governmental organizations, and hosted a reception for the heads and deputy heads of all delegations to the Oslo Seminar as well as representatives from non-governmental organizations and the media. Chairman Hoyer delivered a plenary statement at the opening of the second week of the meeting.

#### **Background to and Organization of the Meeting**

By the time the Copenhagen Meeting of the Conference on the Human Dimension was held in June 1990, most of Eastern Europe's hard-liners had fallen, the two Germanies were moving toward unification, and the CSCE had agreed to hold an historic summit in Paris that November. In this context, agreement was reached in the Copenhagen Document on language recognizing the need for cooperation in the establishment and promotion of democratic institutions which would, in turn, encourage democratic values and practices.

Subsequently, the Paris Summit of CSCE Heads of State or Government agreed in November 1990 to convene a supplemental, 2-week inter-sessional meeting (in addition to the many meetings already mandated by the 1989 Vienna Concluding Document) devoted exclusively to the subject of "consolidating and strengthening viable democratic institutions." Agreement to hold such a meeting reflected the common view that Eastern Europe, the Soviet Union, and the Baltic States were at an historic crossroads; a failure to entrench fully democratic institutions might lead to the ultimate reversal of the tremendous gains reflected in the 1990 Paris Charter.

The agenda called for the first two sessions of the Seminar to be plenary meetings, open to the public, followed by 7 days of consecutive, closed meetings of working groups. These sessions in turn were broken down into three segments to examine the following subjects: constitutional reforms, the rule of law and independent courts, and the division of power among the three branches of government (working group A); the organization of elections, political parties and non-governmental organizations (working group B); and comparative aspects of legislation in the area of human rights and fundamental freedoms (working group C).

#### U.S. Objectives for the Meeting

Just a few weeks prior to the opening of the Oslo Seminar, the CSCE participating States convened in Moscow for the third of three human dimension meetings mandated by the Vienna Concluding Document. That meeting, which concluded with a substantive document, overlapped to some degree with the subject matter of the Oslo Seminar. The United States, like most delegations, believed that it was unlikely that further progress in negotiating additional substantive commitments could be made so soon after Moscow and in the short amount of time available in Oslo.

Consequently, the United States believed that the Oslo Seminar could best be used as an opportunity to hold further consultations regarding the idea advanced by Secretary Baker for transforming the Warsaw-based CSCE Office for Free Elections



(OFE) into an Office for Democratic Institutions (ODI)--an idea generally endorsed in the 1991 Moscow Document as well as the NATO Summit communique issued in Rome during the Oslo Seminar. Although it was not expected that the Oslo meeting would take specific steps to that end, consultations in Oslo could help pave the way for the adoption of concrete measures by the CSCE Council of Ministers (scheduled to meet in January 1992) or at the Helsinki Follow-up Meeting (scheduled to convene in March 1992).

#### **Opening Plenaries, Working Bodies, and Expert Participation**

Gro Harlem Brundtland, the Prime Minister of Norway, opened the first plenary session with an address in which she asserted that the "new security order must be built on existing CSCE principles." She also expressed her belief that the Seminar would, through its discussion of practical ideas and contacts between people, make a lasting contribution to the future of democracy. Like many speakers to follow, she endorsed the suggestion to expand the Warsaw Office for Free Elections into a "center for democracy and human rights."

In addition, Prime Minister Brundtland called for an end to the violence in Yugoslavia, noting that CSCE standards should be upheld not only by participating States, but "aspiring states" as well. In this context, she urged that CSCE must have the means to respond to emerging conflicts as well as acute crises; CSCE peace-keeping options deserve careful consideration. Many delegations, including the U.S. delegation, echoed the Prime Minister's concerns over the on-going war. The Yugoslav representative, in a frank if somewhat bleak statement, attributed the current tragedy in his country to an historic lack of democratic institutions.

Many of the presentations made at the opening plenary, including that of Assistant Secretary Schifter, emphasized the idea of transforming the Warsaw Office of Free Elections into an Office of Democratic Institutions that would serve as a clearing-house for information and activities designed to promote democratic institution-building in the newly-free states of Europe. While

most plenary speakers supported this concept, many also expressed the belief that there must be coordination with the Council of Europe in this area.

In a procedural first, the representative from the Netherlands --the country currently holding the European Community presidency--made a single opening statement on behalf of all the EC member states; accordingly, the other eleven members waived their rights to make individual opening statements. The EC address underscored the need for a practical approach to the rest of the meeting, and called for the study groups to work in an informal mode as much as possible to facilitate the exchange of views.

Commission Chairman Steny H. Hoyer addressed the November 11 plenary session, which fell mid-way through the Seminar. While imploring the participating States to ensure that the newly-independent countries of Europe do not falter in their pursuit of democracy, he noted that in places such as Tbilisi, Nagorno-Karabakh, and Yugoslavia, political and social turmoil can prevent the very foundation of democratic institutions from ever being built. When fundamental conflicts are not addressed and resolved, Hoyer noted, constitutional order is undermined, free and fair elections are compromised, and basic human rights are at risk.

After the opening plenaries, agreement was reached that the working groups would meet formally for whatever period of time experts and delegates wished; then, the formal working group would be gaveled close, country nameplates would be turned over (a gesture designed to signify that speakers were no longer purporting to represent national views), and participants would be able to engage in a more spirited informal exchange of views. In fact, the distinction between formal and informal sessions was discernable only to the trained observer; during some "informal" sessions, experts read lengthy prepared statements. By the end of the Seminar it was clear that spontaneous, informal discussion is difficult if not impossible among 38 interlocutors, with interpretation into six languages, and with few if any rules governing their choice of topics or the duration of their interventions.

In both the formal and informal working group sessions, both of which were closed to the public, experts and other delegates described their national experiences. In this context, participants presented statements reflecting the divergent experiences of the participating States, some of which aspire to consolidate democratic gains while others seek to preserve their more deeply entrenched democracies. Not surprisingly, a wide variety of views were expressed. Often experts noted seemingly contradictory needs in emerging democracies: for example, it was noted that the need for stability and order in society may be difficult to reconcile with the desire for rapid political, legal, and economic transition.

As a rule, experts and other delegates did not make specific and concrete judgments regarding how the essential elements for building democratic institutions, previously elaborated in the Copenhagen, Geneva, and Moscow Documents, were being implemented. Perhaps the one notable exception to this practice regarded the new Bulgarian constitution: several speakers voiced the conclusion that provisions of the Bulgarian constitution which prohibit ethnically based political parties are inconsistent with fundamental notions of democracy, including freedom of association.

In addition to the presentations and discussion among experts and delegates, representatives from the Council of Europe and the European Commission on Democracy through Law answered questions or requests for information made to them. Often, these were of less theoretical nature, and described practical programs that the Council already has in place. Written contributions on the full range of subjects embraced by the Oslo mandate were also circulated during the meeting. These contributions enhanced the overall work of the Seminar and, ultimately, may help with longer-term efforts to implement democracy-building hypotheses.

Throughout the Seminar many experts made themselves available for further discussions with interested colleagues. In one case, in the margins of working group A, a relatively smaller group of experts met at their own initiative to continue discussions on constitutional reform. That group drafted 2 pages of its own conclusions, which, in turn, were circulated among the various

delegations. Parallel activities, organized by the Norwegian Human Rights Institute, also complemented the work of the Seminar and featured discussions addressing a broad range of topics, from general subjects such as emergency legislation to specific countries of concern such as the Soviet Union, Cyprus, or Northern Ireland. Contacts in the margins of the meeting among the various experts, government representatives, and non-governmental representatives contributed greatly to the overall work of the Seminar.

Although there was a provision in the agenda for two sessions of closing statements to be made at the end of the Seminar, delegations chose not to make them when last minute haggling over the document delayed the end of the meeting. H.E. Thorvald Stoltenberg, Foreign Minister of Norway, delivered a closing address to the Seminar before it was gavelled closed.

#### **Proposals, Negotiations, and a Document**

Most delegations seemed to approach the Oslo meeting with a sense that it would best be used as a forum for experts' discussions, and that a parallel effort by diplomats to negotiate a document would detract from that endeavor. This view was expressed most strongly by the Canadian Head of delegation who, in his opening statement, argued that Oslo "need not enter into detailed negotiations," recalling that such drafting could be done in Helsinki--scheduled to open in March of next year--and that "diplomats [in Oslo] should be seen and not heard." In short, he concluded, the Oslo Seminar would be most successful if it proceeded "without a documentary target," and focused instead on a real exchange of views.

To some degree, this statement may reflect a general dissatisfaction with some other, relatively recent CSCE inter-sessional meetings--notably the Cracow Cultural Symposium and the Geneva Meeting of Experts on National Minorities--where some experts asserted that the behind-the-scenes negotiations shifted time and attention from substance to form. But perhaps more significantly, the statement illustrates a growing sentiment that the CSCE is "running out of words," or has, at least for the moment, exhausted

the rush of political momentum unleashed after 1989 and needs to digest what it has produced.

Indeed, during the course of the meeting, only two proposals were formally introduced, a number that stands in sharp relief compared with the large number of proposals introduced at other CSCE meetings this year: 35 at the Cracow Cultural Symposium, 19 at the Geneva Meeting of Experts on National Minorities, and 47 at the Moscow Human Dimension Meeting. Moreover, both proposals were introduced by the Soviet Union and both touched on themes which had been raised by the Soviet delegation at the Moscow Human Dimension Meeting: one called for the establishment of national centers for democratic institution; the other for the participating States to accept the supremacy of international law over domestic law.

Nevertheless, the mandate for the Oslo Seminar required a "summing up," and during the second week of the meeting differences of opinion regarding the nature and form of that "summing up" only underscored the lack of a common understanding among delegations regarding the ultimate goal of the Oslo Seminar. Some delegations took the position that a lengthy chronicle of the working group discussions was absolutely essential to the success of the meeting. The United States, among others, advocated a concise account of the meeting, arguing that any attempt to condense the views expressed by the experts in, by a conservative estimate, more than 40 hours of debate would not do justice to the sophisticated, complex, and often contradictory nature of their deliberations. Moreover, the United States argued that a long document which would neither elaborate new commitments nor establish a program of action would undermine the credibility of the CSCE process. The United States also noted the contradictions associated with trying to draft a summary of the working group sessions before they were in fact complete. In the end, however, the arguments of the U.S. delegation were supported by only a very few delegations--most notably Germany. As the final week passed, the mandate for a "summing up" drew delegations inexorably toward a text that only became progressively longer.

On the last day of the meeting, delegates met until 4:30 am, finally finishing their work with the understanding that an acceptable text had been worked out (pursuant to acceptance in respective capitals) that would be taken up at the final plenary later that morning. Although much of this last-minute haggling was spent nuancing aspects of the summary, the most contentious issues were the characterizations of the (as yet non-existent) Office for Democratic Institutions, the Council of Europe, and their relations with each other in the field of democracy building. Throughout the Oslo Seminar, the French delegation, acting as the self-proclaimed champion of the Council of Europe (often to the visible embarrassment of individual Council representatives), had maintained that the Oslo meeting did not have the authority to take any action on the idea of transforming the Office for Free Elections into an Office for Democratic Institutions.

At the eleventh hour, French delegates informed their colleagues that the text was unacceptable in Paris, necessitating that the clock be stopped while delegates attempted to hurdle this additional obstacle. Reportedly, Paris protested the lack of optical parity between the provisions mentioning the Council of Europe and the provisions mentioning the Office for Democratic Institutions, and insisted on having the word "essential" inserted before the recognition of the "character of the role of the Council of Europe in the areas of rule of law and the defense of human rights." However, some delegates suspected that France's real objective was to ensure that purely European, rather than transatlantic, institutions, constitute the bedrock of the CSCE. This view took into account France's long-standing reticence towards NATO, France's efforts earlier this year to establish a "Confederation of Europe" which would exclude the North American democracies from its framework, and the fact that of the Council of Europe's 26 member states only France insisted on these specific wording changes. Further confusion ensued when the Austrian delegation suggested the proposed new title for the CSCE Warsaw office ("the Office for Democratic Institutions") also be reconsidered. After failing to obtain its desired modifications, the French delegation submitted a lengthy interpretative statement largely disavowing the report.

In fact, the document already contained a statement specifically indicating that it reflected only the views of experts and "does not purport to express any new commitments on the part of participating States." Although on the last day of the meeting the Norwegian delegation formally introduced this report as a proposal, no delegation formally proposed that the participating States adopt the report by consensus. Instead, the participating States merely agreed that the summary be sent to the Council of Foreign Ministers, scheduled to meet next in January 1992.

### Conclusions

During the months leading up to the Oslo Seminar, an increasing number of CSCE countries expressed doubt that additional substantive commitments could be wrung out of the record number of CSCE inter-sessional meetings mandated by the 1989 Vienna Follow-up Meeting and the 1990 Charter of Paris. At the same time, it has become clear that, in the new Europe, the appetite for a vigorous implementation debate--the very thing which has historically fed the process of elaborating new commitments--has also abated. But while the old *modus operandi* of the CSCE is disappearing, no alternative vision of what the CSCE process *should be* has taken its place, at least at Oslo.

Not surprisingly, then, the Oslo Seminar as a whole seemed to lack a clear objective for its work and delegations lacked a common sense of how to direct their energies. In the end, its final report merely provided a superficial summary of the work of the experts: it failed to contain any new substantive commitments; failed to reflect the complexity and sophistication of many of the experts' interventions; and failed to elaborate or coordinate concrete democracy-building programs that might be pursued jointly or separately by the CSCE participating States.

Indeed, if the Seminar was successful anywhere it was simply in bringing together scores of experts, government officials, and non-governmental representatives, providing an opportunity to develop informal contacts as well as longer-term professional relationships. The experts had every opportunity to take and hold the floor and utilize the meeting for a full and frank exchange of

views. In that sense, the Oslo Seminar was more of an actual experts meeting than has been the case at most previous CSCE experts meetings.

In the margins of the Oslo Seminar, many delegates wondered what could be learned from the difficulties encountered at this experts meeting and what might be avoided in the future. Certainly any country proposing a future CSCE experts meeting would bear the burden of crafting a mandate that would avoid the sort of problems confronted in Norway. In fact, the limitations of the Oslo framework may suggest how future experts meetings should be structured--if they are to be held within the CSCE framework at all. Among the specific difficulties evidenced at the Oslo Seminar, the following are instructive.

- Although Eastern countries in transition were intended to be the beneficiaries of this meeting, most discussions took place among Western delegates and focused on Western experiences; there was little attempt to apply the often theoretical observations of experts to the real-life dilemmas which many countries in transition face. Some Eastern delegates expressed the view that they were taking home little of operational use. In that sense, the meeting failed its purpose.
- The Oslo Seminar dealt with many issues that had been previously taken up at the Copenhagen and Moscow human dimension meetings--constitutions, elections, public participation in democracy. The plethora of CSCE meetings has created a certain amount of ambiguity regarding where and when issues should properly and efficiently be raised and addressed.
- Some experts seemed unfamiliar with the full range of CSCE commitments already undertaken; there was little attempt to relate those existing commitments to programs that might help implement them.
- The scope of the meeting was overly broad. Although the work was divided into more digestible pieces for the three working groups, even these proved too complex to be addressed effectively in the course of a 2-week meeting.
- There was an insufficient distinction between formal and informal working groups. It was questioned whether real give



and take can take place among 38 interlocutors, whether the setting is dubbed informal or not, in the absence of procedural rules specifically designed to facilitate discussion.

- Working groups were closed to the public arguably to facilitate an open, spirited debate; in fact, there was little said in the working groups of a particularly sensitive nature. Members of the public wondered why they were excluded from listening to discussions that, in essence, dealt with the nature of a state's relationship with the public.
- Some delegations argued that their experts were truly independent from government control and therefore could say whatever they wanted with impunity. These delegations also tended to argue that a summary of the experts' views would not be binding in any way on the governments. Other delegations recognized that their experts, while not formally government representatives, reflected in some way the governments that chose them. A Norwegian expert, for example, suggested that his country's monarchy should be abolished; a representative from his government distanced his delegation from those remarks and ensured they would not be reflected in the summary of experts' views. Thus, the "experts" reflected various degrees of independence.
- Some delegations, particularly those from smaller countries with more limited resources, had no "experts" at all and, in some cases, not even the government representatives were able to stay for the second week of the meeting.
- Although one group of experts came up with their own (albeit limited) conclusions, there was no structure for those views to be transmitted to governments or translated into action.

While crafting a better mandate might help address many of these problems, the mandate for the Oslo Seminar was not, in fact, any more vague or ambiguous than most CSCE mandates. What made Oslo different was the lack of coherent sense, either at the time the Seminar was proposed or at the time it was held, of *what the meeting could realistically achieve when all was said and done*. At the upcoming Helsinki Follow-up Meeting, scheduled to open in March 1992, the participating States should squarely address questions regarding the nature and purpose of any proposed future experts meetings.

The experts at the Oslo Seminar reflected a high degree of dedication, experience and professionalism and should be commended for attempting to meet the challenges that the mandate for their work created. Many of them came at considerable personal expense and effort, taking time from demanding schedules at home. The ability of the Oslo Seminar to engage such highly qualified authorities is a credit to the high regard in which the CSCE process is generally held. If the CSCE is to continue to earn that respect, it must find a better way to identify its goals and organize its work in order to achieve them in the changing world conditions that now exist.